

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

76-1437

3
pg 5

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

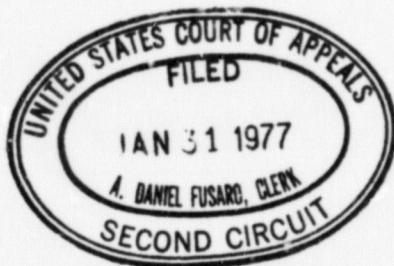
-against-

ANTHONY L. CAVALLARO,

Appellant.

*On Appeal From The United States District
Court For The Northern District of New York*

Appellant's Appendix



JOEL A. SCELSI
Attorney for Appellant
2609 East Main Street
Endicott, N.Y. 13760
(607) 748-8266

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Entries	A1
Indictment	A3
Judgment and Probation/Commitment Order	A4
Excerpts of Minutes	
Colloquy	1
For Govt. - Shepardson - Direct	4
Colloquy	35
Shepherdson - Cross	45
Shepherdson - Redirect	82
Shepherdson - Recross	87
Richard Lee Fitch - Direct	104
Richard Lee Fitch - Cross	117
Richard Lee Fitch - Redirect	121
Buchanan - Direct	122
Buchanan - Cross	130
Sampson - Direct	142
Colloquy	153
Sampson - Cross	154
Baer - Direct	156
Baer - Cross	168
Baer - Redirect	176
Worst - Direct	179
Worst - Voir Dire	182
Steele - Direct	183
Colloquy	188

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

v.

ANTHONY L. CAVALLARO and GERALD J. BROWN;

Defendants.

----- X

February 4, 1976 - Filed Indictment.

February 9, 1976 - Defendant is arraigned and pleads not guilty. Arrested on 12/18/75 and released on 12/19/75. Twenty days for motions. Defendant is released on own recognizance.

March 2, 1976 - Over to Auburn-time excluded.

March 25, 1976 - Filed Notice of Readiness for Trial.

March 29, 1976 - Filed Bail Reform Act Form for Defendant

Anthony Cavallaro

April 26, 1976 - Filed Bill of Particulars.

May 5, 1976 - Ready

July 9, 1976 - Trial. Jury drawn.

July 12, 1976 - Trial continued.

July 13, 1976 - Trial continued. Attorneys move for judgment of Acquittal denied. Mr. Finer moves for dismissal of Indictment on behalf of defendant Brown on grounds stated-denied. Mr. Scelsi moves for mistrial on behalf of Cavallaro on grounds of surprise - denied. 2:15 Judge MacMahon charges jury. At 3:45 jury comes in with verdict-guilty for both defendants. Mr. Scelsi and Mr. Finer both move to set aside Jury Verdict on grounds

DOCKET ENTRIES

stated - denied.

July 13, 1976 - Mr. Pavone moves for revocation of bail of each of the defendants. Judge MacMahon directs both of defendants shall be incarcerated on pending sentence. Defendant Brown already incarcerated on State Charge, Marshal shall file a detainer in the event of his release from State Confinement. Defendants remanded to custody of Marshal. Presentence investigation ordered.

July 12, 1976 - Filed Order to Issue Subpoena Decus Tecum.

July 13, 1976 - Filed Court Exhibit 1 and 2 and Defendant's Exhibit A Government's Exhibit 1.

July 20, 1976 - Filed Defendants Trial Memorandum of Law.

July 22, 1976 - Filed Defendants Request to charge.

July 22, 1976 - Filed Government's Request to Charge.

July 22, 1976 - Filed Trial Memorandum of the U.S.

September 14, 1976 - Filed ex. Warrant of Arrest ex.

12/17/75 at Binghamton.

September 16, 1976 - The Court advised the defendant of his right to speak in his own behalf, defendant speaks, his attorney speaks. The defendant is committed to the custody of the attorney general for imprisonment for a period of twenty-five (25) years. Defendant is advised of his right to appeal. Attorney moves for bail pending appeal - denied.

September 17, 1976 - Filed Judgment - copies U.S. Marshal. Judge MacMahon.

September 22, 1976 - Filed Notice of Appeal.

INDICTMENT

- - - - - X

SAME TITLE

- - - - - X

COUNT I

THE GRAND JURY CHARGES:

On or about December 10, 1975, within the Northern District of New York, ANTHONY L. CAVALLARO and GERALD J. BROWN wilfully and knowingly did transport in interstate commerce from Johnson City, New York, to the State of Pennsylvania, Mary Shepardson who had theretofore been unlawfully seized, inveigled, decoyed, carried away and held by the said ANTHONY L. CAVALLARO and GERALD J. BROWN for ransom, reward, or otherwise, that is, for the purpose of obtaining information.

In violation of Title 18, United States Code, Sections 1201(a) and 2.

A TRUE BILL

s/Michael Citone
FOREMAN OF THE GRAND JURY

James M. Sullivan, Jr.
UNITED STATES ATTORNEY

JUDGMENT AND PROBATION/COMMITMENT ORDER

September 16, 1976

- - - - - X

SAME TITLE

- - - - - X

With Counsel Joel A. Scelsi.

Plea: NOT GUILTY

There being a verdict of guilty, defendant has been
Convicted as charged of the offense on or about December 10, 1975,
within the Northern District of New York, wilfully and knowingly
transporting in interstate commerce from Johnson City, New York
to the State of Pennsylvania, Mary Shepardson who had theretofore
been unlawfully seized, inveigled, decoyed, carried away and held
by said Anthony L. Lavallaro and Gerald J. Brown for ransom,
reward, or otherwise, that is, for the purpose of obtaining
information.

In violation of Title 18, USC Sections 1201(a) and 2.

The court asked whether defendant had anything to say
why judgment should not be pronounced. Because no sufficient cause
to the contrary was shown, or appeared to the court, the court
adjudged the defendant guilty as charged and convicted and ordered
that the defendant is hereby committed to the custody of the
Attorney General or his authorized representative for imprisonment
for a period of twenty-five (25) years.

s/Lloyd F. MacMalett
U.S. District Judge

1 witnesses, the kidnapping victim's wife, Mary
2 Shepardson. Shortly after this incident took
3 place she was relocated under the witness
4 protection program and I would ask that the Court
5 direct Counsel not to inquire of her present
6 whereabouts or her present address.

7 THE COURT: Well, I can't direct
8 him not to, but if you represent that she has been
9 relocated -- were there any threats on her life?

10 MR. PAVONE: Your Honor, there
11 were some problems immediately after this incident
12 took place, apparently. There is a tremendous
13 fear on the part of the witness.

14 THE COURT: But what overt problems
15 were there?

16 I don't see why it matters to you
17 anyway where she lives.

18 MR. SCELSI: Well, it may.

19 THE COURT: If you agree not to
20 ask the question we have no problem.

21 MR. SCELSI: I don't agree. I
22 don't think there were any overt acts or anything
23 whatever.

24 THE COURT: Well, what do you need
25 to ask the question for anyway? What does it matter

1 where she lives now or what her telephone number
2 is now or anything about her now? How is it in
3 any way material to this case?

4 MR. SCELSI: Well, I am maybe
5 not concerned where she is, but I certainly feel
6 that --

7 THE COURT: How is it in any way
8 material?

9 MR. SCELSI: Her being secreted
10 may have been a disadvantage to the defense too,
11 making her unavailable for any investigation as
12 to her allegations and so forth. We haven't been
13 able -- she just disappeared after this and I
14 have never known of her whereabouts until today
15 if she is here in Court.

16 THE COURT: Tell me how it is
17 material now.

18 MR. FEINER: It may come up,
19 Your Honor, as to questions regarding her
20 credibility as to having been made an offer or
21 something in return for her testimony.

22 THE COURT: It is pretty hard for
23 me to rule on it in a vacuum, so I would tell you
24 not to ask the questions unless you feel it is
25 absolutely necessary.

1 When he asks them, you object.

2 MR. PAVONE: Yes, sir.

3 THE COURT: And I will sustain
4 the objection and we will dismiss the jury and
5 we will hear what her answer is in camera. But
6 that might not be too good. The whole idea is
7 not to disclose her whereabouts. And I don't
8 see any materiality. Unless you can demonstrate
9 some materiality, which you certainly haven't
10 done now, I don't see how it is material in any
11 way where she has been, what she is doing now or
12 any clue to her whereabouts at this time.

13 MR. SCELSI: Well, I am really
14 not concerned where she is presently. I could
15 care less. But I think the fact is important.
16 Once this incident occurred, the Government,
17 whether rightly or wrongly, just whisked this
18 woman away.

19 THE COURT: You may be right that
20 she hasn't been available for you to interview,
21 that fact, for what it is worth.

22 MR. SCELSI: All right. While we
23 are on the subject, there are many extraneous
24 matters included in this. This was a transaction
25 that started maybe a week before the incident that

1 the testimony and the facts and the charge of
2 His Honor, who will eloquently tell you what the
3 law is, you will find that the kidnapping in this
4 particular case there was not kidnapping. I am
5 not going to call it a conspiracy, but I think that
6 this is what it was on the part of the Government
7 to get these people for a crime they didn't
8 commit because of maybe extraneous factors and
9 pushing and talking to witnesses and building their
10 case with the help of the F.B.I.. Thank you very
11 much.

12 THE COURT: All right, Mr. Pavone.

13 MR. PAVONE: I call Mary
14 Shepardson, please, Your Honor.

15 MARY SHEPARDSON,
16 having been called as a witness in behalf of
17 the Government, was first duly sworn according
18 to law and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PAVONE:

21 Q Miss Shepardson, how old are you?

22 A Twenty-four.

23 THE COURT: Please keep your voice
24 up, Miss Shepardson.

25 Are you married?

For Govt. - Shepardson - Direct

THE COURT: See if you can make it

bounce right off that back wall so everybody can hear you.

A Yes -- no, I am not married.

Q Which is it?

A I am not married.

Q Now, are you appearing in Court here today pursuant to a subpoena?

A Yes.

Q Miss Shepardson, were you living in the Binghamton area around December 1975?

A Yes.

Q Where were you living at that time?

A I was living in Trailer Village.

Q Whereabouts is that?

A That is in Endicott.

Q You were living in a trailer?

A Yes.

Q Did you live alone?

A I lived there with my son.

Q How old is your son?

A Two.

Q And at that time how old was he?

A He was about a year and a half.

Q Are you acquainted with a girl by the name of

1 Debbie Buchanan?

2 A Yes.

3 Q How did you become acquainted with Debbie Buchanan?

4 A I met her in a restaurant through her aunt where
5 I was working.

6 THE COURT: Can you get your voice
7 up a little more? We have got Mrs. Powers back
8 there who has to strain to hear you.

9 Q Do you consider her a friend?

10 A Yes.

11 Q Now, Miss Shepardson, I would like to direct your
12 attention to the day of December 10th, 1975. Did
13 you have occasion to visit Debbie Buchanan's house
14 at that time?

15 A Yes, I did.

16 Q Where did Debbie live?

17 A She lived on 5 Camden Street.

18 Q Where is that located?

19 A That is in the Endwell area.

20 Q Is that a house or an apartment or what?

21 A It is an apartment house.

22 Q Did anybody else live there with Debbie?

23 A Dick Finch.

24 Q You said it was an apartment house?

25 A Yes.

1 Q How many more apartments were there?

2 A I think there were two or three more apartments.

3 Q And who lived in the other apartments, do you know?

4 A Dick Samson, and the other apartment, I guess,
5 downstairs was his father, but he didn't live
6 there, and some --

7 Q I'm sorry?

8 A And somebody else lived there.

9 Q Mary, could you keep your voice up?

10 THE COURT: If you want to move
11 your chair up here where you can hear, I understand
12 the difficulty. The acoustics are very bad and
13 the witness doesn't keep her voice up. I have
14 asked her twice.

15 Please try to speak louder because
16 it is awfully hard to hear.

17 MR. SCELSE: I apologize, but I
18 can hardly hear her.

19 THE COURT: That's all right, no
20 apology is necessary. You have to hear in order
21 to do your job.

22 MR. SCELSE: Thank you.

23 THE COURT: All right.

24 BY MR. PAVONE:

25 Q Now, where did Dick Samson live?

- 1 A Five Camden Street.
- 2 Q In the upstairs apartment?
- 3 A Right.
- 4 Q Above Debbie's house?
- 5 A Right.
- 6 Q Now, did you know Dick Samson?
- 7 A Yes, I did.
- 8 Q How did you meet him?
- 9 A I met Dick through Debbie.
- 10 Q Did you consider him a friend of yours?
- 11 A Yes, I did.
- 12 Q Now, Miss Shepardson, in getting back to the day
- 13 of December 10th, 1975, why did you go to Debbie's
- 14 house?
- 15 A Because Debbie was my babysitter.
- 16 Q You went to her to babysit for you?
- 17 A Yes.
- 18 Q And what did you intend to do?
- 19 A I was going to go to work and I was going to go
- 20 down to welfare.
- 21 Q And what were you doing at welfare?
- 22 A I was going to try to get some money so I could
- 23 get some fuel in my trailer.
- 24 Q You didn't have any fuel for the trailer?
- 25 A No, I didn't.

1 Q Okay. So what did you do when you got to Debbie's
2 house?

3 A I went and I was hitchhiking, I went out to go to
4 welfare and she was watching the baby, and then I
5 went down to welfare.

6 THE COURT: What time was this?

7 THE WITNESS: It was about 10:30
8 in the morning.

9 THE COURT: When, what day?

10 THE WITNESS: I don't know, I can't
11 remember.

12 BY MR. PAVONE:

13 Q Do you remember the month?

14 A It was in December.

15 Q Was it a weekend or weekday?

16 A It was a weekday.

17 Q Now, who else was home besides Debbie, anybody?

18 A Her boyfriend was home.

19 MR. SCELSE: I object to any
20 testimony if she doesn't know what time in December
21 she is talking about.

22 THE COURT: Overruled.

23 BY MR. PAVONE:

24 Q Was anybody home besides Debbie when you went over
25 there?

1 A Yes, her boyfriend.

2 Q What is his name?

3 A Dick Finch.

4 Q Do you know where he was living?

5 A Pardon me?

6 Q Do you know where he was living at that time?

7 A He was living there too, at 5 Camden.

8 Q Five Camden Street?

9 A Right.

10 Q Now, tell us how you got to the welfare office?

11 A I was hitchhiking down there.

12 Q And did you get a ride?

13 A Yes.

14 Q Who picked you up, did you know the people who
15 picked you up?

16 A I knew Tony Cavallaro picked me up.

17 Q Was he alone?

18 A No.

19 Q Did you accept a ride from Tony Cavallaro?

20 A Yes, I did.

21 THE COURT: Did you know him before
22 this?

23 THE WITNESS: Yes.

24 THE COURT: How long did you know
25 him before this?

1

THE WITNESS: Maybe a year, if

2

that.

3

THE COURT: How did you know him?

4

THE WITNESS: Through Dave Bair.

5

THE COURT: Socially?

6

THE WITNESS: Yes.

7

THE COURT: Had you been out with

8

him?

9

THE WITNESS: No.

10

THE COURT: Never had a date with

11

him?

12

THE WITNESS: No.

13

BY MR. PAVONE:

14

Q Now, what did you do after you went to the welfare
office, Miss Shepardson?

15

16

A I came back and they wouldn't give me any money
for my fuel, so I had Dick Finch take me to look
for fuel for the trailer.

17

18

19

Q Were you successful in finding fuel for the trailer?

20

A No, we couldn't get a can.

21

Q So what did you do then?

22

A So I just came back and Debbie -- I was upset about
the fuel and Debbie told me to just stay there with
her and --

23

24

25

Q Did you stay at Debbie's house all afternoon?

For Govt. - Shepardson - Direct

1 A I stayed with Debbie, yes.

2 Q Did you go out by yourself after that?

3 A Yes.

4 Q Where did you go then?

5 A I went to the grocery store to get some food in
6 the house.

7 Q And what did you do when you got back from the
8 grocery store?

9 A When I came back, Debbie was there at the door and
10 she asked me if I was all right and I asked her
11 why, and then she told me why.

12 Q What did she say to you?

13 A She said --

14 MR. SCELSI: Your Honor, this is
15 hearsay, I object to it.

16 THE COURT: Sustained.

17 BY MR. PAVONE:

18 Q Miss Shepardson, what happened next when you got
19 home? Debbie was there?

20 A Debbie was there and she told me about a phone call
21 she had received.

22 Q Did the phone call involve you in any way?

23 A She just told me to stay there, that, you know,
24 that Dave had been beaten up and somebody wanted
25 some information.

1 THE COURT: Sustained. Strike it
2 out.

3 MR. PAVONE: Excuse me, Your Honor,
4 but I think the statement is admissible as
5 intending to show the situation leading up to the
6 time that --

7 THE COURT: It is hearsay. Next
8 question.

9 MR. PAVONE: Yes, sir.

10 BY MR. PAVONE:

11 Q What happened next, Miss Shepardson?

12 A Debbie told me to just stay there, to stay in the
13 house.

14 Q And did you stay at the house?

15 A Yes.

16 Q And did you receive a visitor at that time or later
17 on, did somebody come to call on you at Debbie's
18 house that afternoon?

19 A Yes, they did.

20 Q Do you know who that person was?

21 A I had never seen him before. -

22 Q Did you subsequently learn who he was?

23 A Yes.

24 Q Can you describe him?

25 A He was tall and big and had kind of brownish hair.

1 Q Would you look around the Courtroom, please, Miss
2 Shepardson, and tell me if you can identify that
3 man who came to call on you that afternoon at
4 Debbie's house?

5 A Yes.

6 Q Do you recognize him?

7 A Yes.

8 Q Do you recognize him?

9 A Yes.

10 Q Can you indicate to me where he is sitting, please?

11 THE COURT: What is he wearing?

12 THE WITNESS: A yellow shirt.

13 BY MR. PAVONE:

14 Q Can you see him from where you are sitting?

15 THE COURT: Stand up so you can
16 see everyone. Do you see the man?

17 THE WITNESS: No.

18 BY MR. PAVONE:

19 Q You don't see the man?

20 A No.

21 Q Do you recognize Anthony Cavallaro in the Courtroom
22 today?

23 A Yes.

24 Q Can you tell me where he is sitting?

25 A There with the blue shirt on.

1 THE COURT: Let the record reflect
2 that she has identified Cavallaro.

3 MR. PAVONE: Thank you, Your Honor.

4 Q Now, Mary, do you recognize the man who called
5 upon you that afternoon in the Courtroom?

6 A No.

7 Q Can you describe him for me, please, as best you
8 can recall?

9 A He weighed about, maybe 180 pounds, maybe not that
10 much, maybe about 175 pounds.

11 Q And what did he say to you when he came into the
12 house?

13 A He told me that --

14 MR. SCELSI: Your Honor, unless she
15 can identify someone by name, I would object to
16 this testimony. I don't know who she is referring
17 to. I think it is --

18 THE COURT: Well, perhaps he will
19 be identified later. I will take it subject to
20 connection. Proceed.

21 MR. PAVONE: Thank you.

22 BY MR. PAVONE:

23 Q Will you tell me what this man said to you?

24 A He told me to come outside, that Dave Bair was out
25 there and that he wanted to talk to me.

1 MR. SCELSE: Your Honor, again,
2 that would be hearsay.

3 THE COURT: I will take it for the
4 fact that it was said and not for the truth of it.
5 Go ahead.

6 Q Then what happened next, Mary, please, if you will
7 tell the Court?

8 A Then he told me, he says, "Get in the car", and he
9 says, "We are going to go for a ride".

10 Q Now, was anybody in the car when you went out to
11 the car?

12 A Yes.

13 Q Who was in the car?

14 A Dave Bair and Tony Cavallaro.

15 Q Where was Dave Bair sitting?

16 A In the back seat.

17 Q Where was Tony Cavallaro sitting?

18 A He was driving.

19 Q Now, did you notice anything unusual about the
20 appearance of Dave Bair?

21 A Well, his face looked swollen and he --

22 MR. SCELSE: Your Honor, this is
23 immaterial and irrelevant.

24 THE COURT: I would like an offer
25 of proof.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PAVONE: Your Honor, it just

sets the scene.

THE COURT: Please, up here with
an offer of proof.

(The following was an on-the-record
discussion at the bench).

THE COURT: Who is Dave Bair?

MR. PAVONE: Your Honor, this is
an individual who was an associate of Tony
Cavallaro and he was in the car on the night that
Miss Shepardson was taken away for the ride to
Pennsylvania. He was seen in the back seat. She
will testify that his face was swollen and he
appeared to have been beaten up, which tends to
establish the witness's situation in connection
with the trip that night, Your Honor, the serious-
ness of the matter.

MR. SCELSI: There is nothing in
evidence as to who beat him up. He could have
fallen off a step.

THE COURT: That isn't the point.
The point is her state of mind. Overruled. Go
ahead. Just what she observed.

MR. PAVONE: Yes, sir.

(Proceedings continue in open Court).

1 BY MR. PAVONE:

2 Q Now, Miss Shepardson, would you please tell the
3 Court and jury what you observed in connection with
4 Mr. Bair's appearance?

5 A His face looked a little swollen and he looked
6 scared.

7 MR. SCELSI: Objection, Your Honor.

8 THE COURT: Did you know him?

9 THE WITNESS: Yes, I knew him.

10 THE COURT: How long did you know
11 him?

12 THE WITNESS: I have known Dave
13 for about a year.

14 BY MR. PAVONE:

15 Q Now, was anything said, did Tony Cavallaro say
16 anything to you at the time you were standing by
17 the car?

18 A No.

19 Q Did the other gentleman say anything to you at
20 the time you were standing by the car?

21 A He told me to just get in and we were going to go
22 for a ride.

23 Q Did he say why he wanted to go for a ride?

24 A He wanted to talk.

25 Q Did he say what he wanted to talk about?

1 A Not until we got in the car.

2 Q All right. Can you tell us what happened next?

3 Did you get into the car?

4 A Yes.

5 Q And what happened next?

6 THE COURT: How did you get into
7 the car, did you just walk into it with the other
8 man? How did you get from the house to the car?

9 THE WITNESS: He told me to come
10 out and talk to Dave and --

11 THE COURT: The man did?

12 THE WITNESS: Right.

13 THE COURT: And what did you say?

14 THE WITNESS: I said okay, you
15 know, I had no choice. I didn't know what was
16 going on.

17 MR. SCELSI: Objection.

18 THE COURT: What did he say that
19 gave you no choice, what did the man say or do?

20 THE WITNESS: I just thought they
21 wanted me to talk to Dave, Dave wanted to talk to me.

22 THE COURT: Oh, I see. You knew
23 Dave?

24 THE WITNESS: Yes.

25 THE COURT: I see, all right. So

1 you went out to talk to Dave?

2 THE WITNESS: Right.

3 BY MR. PAVONE:

4 Q Now, when you got into the car, what happened next?

5 A We started going up the highway and he started
6 telling me about what was going to happen, then
7 he went --

8 THE COURT: Who is he?

9 Q Who is he?

10 A Gerry Brown.

11 Q Is this the man you referred to as the big man?

12 A Right.

13 Q You didn't know him at that time, did you?

14 A No, I didn't.

15 Q Did you subsequently learn his identification?

16 A Yes.

17 Q How did that happen?

18 MR. SCELSI: Again, I object, Your
19 Honor.

20 THE COURT: Overruled.

21 Q Proceed, Miss Shepardson. How did you subsequently
22 learn the identification of the other man as Gerry
23 Brown?

24 A Because the policeman showed me a number of pictures
25 to identify.

1 Shepardson. Did Anthony Cavallaro say anything
2 to you during the car ride?

3 A Yes.

4 Q What did he say to you?

5 A He told me that he was tired of being ripped off
6 and that he wanted -- he was tired of people lying
7 at him.

8 Q Did you have any information as to what he was
9 talking about?

10 A No, I didn't.

11 Q How about the other gentleman?

12 A He was telling me that I had better tell the truth
13 about what had happened and that he was hired to
14 kill me.

15 Q Did he say who hired him to kill you?

16 A Yes.

17 Q Who?

18 A Tony Cavallaro.

19 Q So what happened next? Did these gentlemen display
20 guns during the car ride?

21 MR. SCELSI: Same objection, Your
22 Honor, as hearsay and so forth.

23 THE COURT: It isn't hearsay. Your
24 client was there.

25 MR. SCELSI: They have not identified

1 who said it, Your Honor.

2 THE COURT. That doesn't make any
3 difference. Go ahead.

4 BY MR. PAVONE:

5 Q Did these gentlemen display weapons at any time
6 while you were in the car ride, Miss Shepardson?

7 A Yes.

8 Q Both of them?

9 A Yes. Just one when we were in the car.

10 THE COURT: Who said this to you,
11 the man you later learned was Gerry Brown?

12 THE WITNESS: Yes.

13 THE COURT: That is the man who
14 said it, not Dave and not --

15 THE WITNESS: Not Tony. Gerry
16 Brown told me that he was hired to take care of
17 this matter.

18 THE COURT: All right.

19 BY MR. PAVONE:

20 Q And what matter was that, Miss Shepardson?

21 A That they had been ripped off for pot and they
22 wanted their money back.

23 Q I see. Now, tell us about the incident in which
24 Mr. Cavallaro displayed a weapon.

25 A I was talking to Gerry Brown and just telling him

1 I didn't know anything about this, and Tony got
2 mad and he told -- called me a liar and he stopped
3 the car, and that is when he displayed the weapon.

4 Q What was it, a gun?

5 A Yes.

6 Q Did he point it at you?

7 A Yes.

8 Q And what did you say when he slammed on the brakes
9 and pointed this gun at you?

10 A I just said, "Oh my God, I don't know anything".

11 Q Then did Brown say anything at that time?

12 A Yes, he told Tony to just cool it, that he was
13 hired to do this, this was his job, he would take
14 care of it.

15 Q Then what happened next?

16 A Then they drove on and told us that we were going
17 to go to the Circle of Life and that we only had,
18 you know, a little time to talk.

19 Q Did you know whereabouts you were as you were
20 driving in the car?

21 A It was in Pennsylvania. I remember a sign that
22 said, "Welcome to Pennsylvania". We were out in
23 the country somewhere.

24 Q And you saw a sign that said "Welcome to
25 Pennsylvania"?

1 A Yes.

2 Q Now, what happened as you were driving further down
3 in the car after Tony Cavallaro had slammed on the
4 brakes?

5 A Gerry Brown started talking about my son and if I
6 ever wanted to see him again, I better tell him
7 where these people were.

8 Q Did there come a time when they stopped the car
9 again?

10 A Yes.

11 Q And what happened when they stopped the car a
12 second time?

13 A They put Dave and I out in front of the car.

14 Q What did you say?

15 A They put Dave and I in front of the car.

16 Q And then what did they do?

17 A They lined us up and told us this was it.

18 Q Did they display weapons at that time?

19 A Yes.

20 Q They had their guns drawn?

21 A Yes.

22 Q This fellow, Mr. Brown, had a gun drawn as well?

23 A Yes, he did.

24 Q Were any shots fired?

25 A Yes.

- 1 Q How many shots were fired, to the best of your
2 recollection?
- 3 A Three.
- 4 Q Do you know where they hit?
- 5 A I know one went past my elbow and he shot a couple,
6 another at my feet.
- 7 Q Who was doing the shooting?
- 8 A Gerry Brown.
- 9 Q Did Mr. Cavallaro fire any shots?
- 10 A I don't know.
- 11 Q Was he pointing his gun at you?
- 12 A No.
- 13 Q And then what happened when Gerry Brown fired the
14 three shots at you?
- 15 A He told Tony that I must be okay, I didn't know
16 anything.
- 17 Q Did you get back in the car?
- 18 A Yes.
- 19 Q And then what happened?
- 20 A And then Gerry Brown told me that, you know, he
21 just saved my life, and then we went to a bar.
- 22 Q You made another stop?
- 23 A Yes.
- 24 Q You went to a bar?
- 25 A Right.

- 1 Q What did you do in the bar?
- 2 A They wanted to get some beer.
- 3 Q Did they say anything in the bar?
- 4 A Well, they just told me I better not do anything.
- 5 Q What did they mean by that?
- 6 A I better not say anything and I better stick close
7 to them.
- 8 Q About how long were you in the bar?
- 9 A Maybe a half an hour.
- 10 Q Do you know where that bar is located?
- 11 A I think it is in Montrose.
- 12 Q How do you know that?
- 13 A Because the F.B.I. and I went back there.
- 14 Q Is that Montrose, Pennsylvania?
- 15 A Yes.
- 16 Q Tell me something, what time was all this happening,
17 Miss Shepardson? Can you recall the time of day?
- 18 A It was late at night.
- 19 Q I see. Then when you left the bar, what happened
20 next, you got back in the car?
- 21 A Yes.
- 22 Q And where did you go?
- 23 A And then they took Dave home.
- 24 Q You were with them at that time?
- 25 A Yes.

1 THE COURT: What time was it when
2 you got in the car to start this ride?

3 THE WITNESS: It was possibly 10,
4 9:30.

5 THE COURT: At night?

6 THE WITNESS: Yes.

7 THE COURT: Was it dark?

8 THE WITNESS: Yes.

9 THE COURT: Was it cold?

10 THE WITNESS: Yes.

11 THE COURT: What kind of a car
12 was it?

13 THE WITNESS: It was -- all I
14 can remember is a green car. I can't remember
15 the make.

16 BY MR. PAVONE:

17 Q What happened when you got to Dave Bair's apartment?

18 THE COURT: Just a minute. How
19 long was it from the time you got in the car until
20 the time you got back to Dave's apartment?

21 THE WITNESS: It seemed like we
22 were gone forever.

23 THE COURT: Well, how long? You
24 say you started out about 9 or 10 o'clock at night.
25 What time did you get back to Dave's?

1

THE WITNESS: Maybe at -- in two

2

or three hours.

3

BY MR. PAVONE:

4

Q So you returned sometime early in the morning the
next day?

5

6

A No, no, it was still at night when we returned.

7

Q It was still dark?

8

A Right.

9

THE COURT: Well, was it after

10

midnight?

11

THE WITNESS: I think so because

12

Dick Finch was home and he gets out of work after
midnight.

13

14

BY MR. PAVONE:

15

Q Now, what happened at Dave Bair's apartment? Did
anybody say anything to you there?

16

17

A I just went up and used the bathroom and somebody
handed me the phone, and that was it.

18

19

Q That was it. Then where did you go from there?

20

A They took me to Debbie's house.

21

Q "They" meaning Tony Cavallaro and Gerry Brown?

22

A Right.

23

Q They took you back to Debbie's house?

24

A Yes.

25

Q And did anybody escort you to the door at Debbie's

1 house?

2 A Yes.

3 Q Do you recall who that was?

4 A I can't remember which one it was.

5 Q It was one of them though?

6 A Right.

7 Q Was anybody home when you returned in Debbie's
8 house?

9 A Yes.

10 Q Who was there?

11 A Dick Finch.

12 Q Did he open the door?

13 A Yes, he did.

14 Q Did the gentleman who escorted you to the door say
15 anything to Dick Finch or yourself when you got in
16 the house?

17 A I can't remember.

18 Q How about Dick Finch, did he say anything?

19 THE COURT: Who took you to the
20 door? We have got people who all have names, so
21 let's use them.

22 MR. PAVONE: Your Honor, she does
23 not recall, I believe the witness stated, which
24 one escorted her to the door.

25

1 BY MR. PAVONE:

2 Q When you went inside, did you say anything to Dick
3 Finch?

4 A I told Dick what had happened and I said to him,
5 you know, I said, I just asked him for another beer.
6 I said, "I got to have another beer", and then I
7 just passed out on the couch.

8 Q Can you recall your exact words to Dick Finch?

9 A No.

10 Q You passed out on the couch?

11 A Yes.

12 Q Tell me something, Miss Shepardson, during that
13 entire car ride, were you free to leave the car
14 at any time?

15 A No.

16 MR. SCELSI: I think that is for
17 the jury to decide, Your Honor.

18 THE COURT: Sustained. Bring out
19 the facts that lead you or her to that conclusion
20 so the jury can draw it if the evidence supports it.

21 MR. PAVONE: Yes, sir.

22 Q Miss Shepardson, did you tell these gentlemen you
23 didn't want to go on this car ride with them?

24 A No, I didn't.

25 Q Why not?

1

MR. SCELST: Objection, Your Honor.

2

THE COURT: Overruled.

3

Q Why didn't you tell them that you didn't want to go to the car with them?

4

5

A I guess because they were ordering me to do as they said, and Debbie had told me earlier what had happened to Dave Bair.

6

7

8

Q Did you at any time tell these gentlemen that you wanted to stop the car ride and go home?

9

10

A No, I didn't.

11

Q Why not?

12

A I was too scared.

13

Q At any time during the car ride did you attempt to escape?

14

15

A No.

16

Q Again, why not?

17

A Because they told me I hadn't better, and most of the time Gerry Brown was holding my hands behind the seat.

18

19

20

Q Now, when you got back to Dick Finch's apartment, did you call the police?

21

22

A No.

23

Q Why didn't you call the police?

24

A Because they told me I hadn't better do anything.

25

THE COURT: Where were you sitting

1 in the car?

2 THE WITNESS: In the beginning I
3 was sitting in the front.

4 THE COURT: Who was with you in
5 the front?

6 THE WITNESS: Tony Cavallaro.

7 THE COURT: Anyone else?

8 THE WITNESS: No.

9 THE COURT: Where was Brown?

10 THE WITNESS: He was sitting in
11 the back of me.

12 THE COURT: And Dave was in back?

13 THE WITNESS: Right.

14 THE COURT: And only the four of
15 you in the car?

16 THE WITNESS: That's right.

17 THE COURT: You said in the
18 beginning. At some point did you change your
19 position in the car?

20 THE WITNESS: Yes, when we came
21 back, Gerry Brown put me in the back with him.

22 THE COURT: And where was Dave?

23 THE WITNESS: He was sitting in
24 the front with Tony.

25 THE COURT: Was Tony driving?

1 THE WITNESS: Yes.

2 BY MR. PAVONE:

3 Q Now, Miss Shepardson, did you call the police as
4 soon as you got back to Dick Finch's apartment?

5 THE COURT: Just one moment. You
6 said Gerry was in the back seat. Was he directly
7 behind you or behind the driver?

8 THE WITNESS: He was behind me.

9 THE COURT: And he was holding your
10 hands, you said?

11 THE WITNESS: Yes.

12 THE COURT: How is that, can you
13 show us? Pretend that is the seat, show us how.

14 THE WITNESS: He was just holding
15 them back here with one of his hands, both of them.

16 THE COURT: Behind the seat?

17 THE WITNESS: In back of me, yes.

18 BY MR. PAVONE:

19 Q Now, Miss Shepardson, did you call the police when
20 you got back to Dick Finch's apartment?

21 A No, I didn't.

22 Q Why didn't you do that?

23 A Because they told me not to, and I was just really
24 scared when I got back. I just was so exhausted
25 that I just went to sleep on the couch.

1 Q Now, after you went to sleep on the couch, were
2 you awakened?

3 A Yes.

4 Q Do you recall about what time that was?

5 A It was early in the morning sometime.

6 Q And who had awakened you?

7 A A policeman came in with a flashlight.

8 Q And the policeman inquired about the events of
9 that night?

10 A Yes.

11 Q Now, Miss Shepardson, I would like to ask you to
12 take a look around the Courtroom, and take your
13 time, please, and I would like to ask you if you
14 can identify the man you later learned was Gerry
15 Brown.

16 THE COURT: Stand up so you can see.

17 Q Yes, please.

18 A (Witness shaking head negatively).

19 Q You can't see him?

20 A I'm not sure if it's him or not.

21 Q Do you see somebody you recognize?

22 A The gentleman in the black suit looks familiar but
23 he was heavier. I don't know.

24 Q Which gentleman in the black suit are you referring
25 to?

1 THE COURT: Gentlemen, proceed.

2 (Whereupon, the following pro-
3 ceedings took place in the courtroom, out of
4 the presence of the jury.)

5 MR. SCELSI: Your Honor, this
6 subpoena was served for the records of the
7 Broome County Social Services, and the Com-
8 missioner of Welfare is here with his attorney.

9 However, they have refused to
10 permit me to see these certain records con-
11 cerning Mary Shepherdson. I subpoenaed them
12 for 9:30, and they got here a little after
13 10. I can understand why they were late,
14 with the weather, but they have refused me
15 access to them, and I will submit to the Court
16 that it is important to the defense to see
17 these records.

18 THE COURT: I have no question
19 about that. Let me see what they have to say.
20 Who is here?

21 MR. THOMAS B. OAKES: Your Honor,
22 I am Thomas B. Oakes, attorney for the
23 Welfare Commissioner.

24 THE COURT: I will be happy to
25 hear what you have to say. I suppose, under

1 state law these are privileged, is that it?

2 MR. OAKES: Yes, sir. Many of
3 them are under the federal statute, also.

4 THE COURT: Well, that privilege,
5 at least, must yield to the point where the
6 Court can inspect them in camera, and since
7 you have the reports here, please turn them
8 over to the Court. I direct you to do so.

9 MR. OAKES: Yes, sir, the reports
10 are present.

11 THE COURT: I direct you to
12 turn them over to me for inspection in camera,
13 and I will mark any that are available and
14 that are material and relevant to this case.

15 MR. OAKES: Shall I submit some
16 writing for the Court?

17 THE COURT: No, you don't need
18 to. The court reporter is right here, and
19 he is writing this up.

20 MR. OAKES: May I make a state-
21 ment?

22 THE COURT: Sure.

23 MR. OAKES: On behalf of the
24 Broome County Social Services Commissioner,
25 I do object to the disclosure of the records

1 in this case. My authority is Title 42,
2 Section 602(a) of the United States Code.

3 It refers to the fact that public
4 assistance records for the ADC, which is Aid
5 to Dependent Children, that category says
6 that the state plans in that program must
7 provide safeguards which restrict the use or
8 disclosure of information concerning appli-
9 cants or recipients for purposes directly
10 concerned with the administration of aid to
11 families with dependent children. And con-
12 sistently with that, Social Services Law,
13 Section 136 of the New York State statute
14 states that information in the public
15 assistance records of the Commissioner of
16 Social Services shall be disclosed only by
17 authority of the Commissioner of Social
18 Services, or his authorized representative,
19 the County Board of Supervisors, City Council,
20 Town Board or other board or body authorized
21 and required to appropriate funds, and by
22 authority of the county, city or town Social
23 Services official, to a person or agency
24 considered entitled to such information.

25 And the state regulations, which

1 is Regulation 357 of the State's Social
2 Services regulations, and that is Title 18 of
3 the state regulations, provides that for a
4 prohibition against disclosure of information
5 in the public assistance records, it says
6 that officers and employees of public welfare
7 agencies shall not reveal information obtained
8 in the course of administering public assistance
9 for purposes other than those directly con-
10 nected with the administration of public
11 welfare.

12 And then the resolution tells us
13 what to do if we get a subpoena from the Court.

14 In that same regulation, at 357.3,
15 down in Subparagraph F it says that in the
16 event that a subpoena from a court is for a
17 purpose not directly related to the admin-
18 istration of public assistance or the pro-
19 tection of a child, the agency shall plead,
20 and the local department, in support of its
21 request to withhold information, and that is
22 the Social Security Act, the Social Welfare Law,
23 and the regulations from the State Department
24 of Social Welfare prohibit disclosure of
25 confidential information contained in records

1 applicable, including the names of the client.

2 It does say that an agency shall
3 be governed by the final order that the Court
4 may make. That is on public assistance records.

5 I think that the Court is aware
6 of the basis of the interest in the client,
7 and to save from embarrassment and danger,
8 and for the protection of any contents of
9 confidential sources by disclosing the records.

10 Further, there is Section 372 in
11 the State Social Services Law, which pertains
12 to child welfare records, and in that section
13 which I submit is the exclusive procedure for
14 obtaining disclosure of child welfare records,
15 and a setting forth of the limited exclusive
16 limited category of persons who are entitled
17 to obtain those records, and it says that
18 upon application by a parent, relative or
19 legal guardian of a child, or by an au-
20 thorized agency, and the law on that statutes
21 means the local Welfare Department, an
22 adoption agency and like that for Family Court,
23 and after due notice to the institution where
24 authorization to the effect that the Supreme
25 Court of the State of New York may, by order,

1 direct the authorization to furnish the
2 information.

3 So this is just for this limited
4 class of person in this limited proceeding.

5 This is such a disclosure of
6 child welfare records that are available, and
7 I would submit that these provisions govern
8 as to the kind of records which are sub-
9 poenaed in this case.

10 THE COURT: Thank you very much.
11 I am familiar with all of this, and I have
12 been over the course many times and in the
13 various regulations in the statutes, them-
14 selves.

15 It is implicitly recognized
16 that the privilege must yield in the discretion
17 of the Court, and in criminal cases, and at
18 least to the point where the Court must
19 inspect them in camera to the end that there
20 will be no denial of due process or suppression
21 of evidence.

22 I have but to cite some recent
23 Watergate problems and cases involving our
24 late President, and as authority for that
25 proposition, so none of these privileges are

1 absolute.

2 I direct you to make available
3 all of the records that were subpoenaed,
4 available to the Court for an in camera
5 inspection. Of course, we will return them
6 to you as soon as they have served our purpose.

7 Thank you very much.

8 MR. OAKES: Thank you, your Honor.
9 Mr. Dimitri is present, because the subpoena
10 was addressed to him. Need he stay?

11 THE COURT: No, he need not stay.
12 I assume that you will stipulate that these
13 are records kept in the regular course of
14 business, and if any of them have to be in-
15 volved, we do not need a witness to testify?

16 MR. PAVONE: I will stipulate
17 to that subject too, and object as to the
18 relevancy.

19 THE COURT: Do you have any
20 objection other than relevancy or im-
21 materiality, as to records kept in the regular
22 course of business?

23 MR. PAVONE: I will stipulate
24 to that, your Honor.

25 THE COURT: Do you need him for

1 MR. SCELSI: I don't think that
2 we would need him, as long as there is no
3 question.

4 THE COURT: They are competent?

5 MR. SCELSI: Sure. The only
6 other situation we have is that of being
7 denied the right to see them, and I did want
8 to look at them prior to my cross-examination
9 of them before --

10 THE COURT: (Interrupting) Well,
11 I will take the time to do it now. I will
12 go over them. I understand that you might
13 need them before cross-examination?

14 MR. SCELSI: Yes.

15 THE COURT: I will take the time
16 to go over them now. We will tell the jury we
17 have some legal problems here.

18 THE CLERK: Court stands in
19 recess.

20 (Whereupon, Court stood in recess
21 from 10:30 a.m. until 11:20 a.m.)

22 THE COURT: Let the record re-
23 flect that the Court has, for more than hour,
24 been reading the in camera file which was
25 subpoenaed. It is about an inch and a half

1 thick, and I find nothing of any significance
2 at this time, or any materiality except two
3 newspaper clippings which I suppose that you
4 already have, and I suppose are matters of
5 public knowledge, but you can look at them
6 if you wish.

7 (Counsel examined two clippings
8 offered by the Court.)

9 THE COURT: Let the record
10 reflect that I have shown the two clippings
11 to counsel. Let's proceed.

12 MR. SCELSE: We are obviously not
13 concerned with newspaper clippings, but counsel
14 finds that we will have to proceed -- well,
15 unless the matter develops later that it may
16 be of essence to us --

17 THE COURT: (Interrupting) We
18 can't hear you.

19 MR. SCELSE: Unless it develops
20 later that there is something important there,
21 after our cross-examination, and I would submit
22 and ask the Court to review his determination.

23 THE COURT: As I said, I find
24 nothing of any immateriality at this time.

25 MR. SCELSE: Thank you.

1 THE COURT: All right, proceed.

2 (Whereupon, the following pro-
3 ceedings were held before the Court and the
4 jury.)

5 THE COURT: Good morning. I am
6 sorry that you have been delayed but we have
7 had matters that required my attention, and
8 not yours, and I thought that you could rest
9 while I was working.

10 Gentlemen, proceed.

11 MARY SHEPHERDSON,
12 having been previously sworn, was examined and
13 testified further as follows:
14

15 CROSS-EXAMINATION

16 BY MR. SCELSI:

17 Q Mrs. Shepherdson, you have testified here last
18 Friday -- well I have never spoken to you and
19 talked to you before today, have I?

20 A No.

21 Q And you haven't been in the area of the Triple
22 Cities, that is Binghamton, for some period of
23 time, isn't that correct?

24 MR. PAVONE: Well, your Honor --

25 THE COURT: (Interrupting)

1 Sustained. Please be quicker with your
2 objections, Mr. Pavone, and voice them,
3 rather than just standing up. The record
4 doesn't indicate that the prosecutor stood up.

5 MR. PAVONE: Yes, your Honor. I
6 beg your pardon.

7 BY MR. SCELSI:

8 Q You first became acquainted or talked with the FBI
9 about this situation sometime around the 15th of
10 December, is that correct?

11 A Around there, yes.

12 Q And previous to that you had talked to some local
13 police authorities, isn't that correct?

14 A Yes.

15 Q And you talked to the Sheriff's office?

16 A Yes.

17 Q And from Tioga County and Broome County?

18 A Yes.

19 Q Correct?

20 A Right.

21 Q And then there came a time when the FBI took over,
22 isn't that right?

23 A Right.

24 Q And they told you that you had been kidnapped,
25 isn't that right?

1 BY MR. SCELSI:

2 Q How long had you known Jerry Brooks?

3 A Not long at all. A real short time.

4 Q Pardon me?

5 A A really short time.

6 Q Two or three weeks?

7 A I don't think it was even that long.

8 Q And where did you meet Mr. Brooks?

9 A When I was living with Dick Sampson.

10 Q Pardon me?

11 A When I was living with Dick Sampson.

12 Q And that was on the second floor of 5 Canyon Street
13 in Johnson City?

14 A Right.

15 Q And Mr. Brooks and this other fellow, what was his
16 name, that came to talk, and you were introduced to?

17 A He brought somebody with him. I guess it was
18 LaMont.

19 Q LaMont?

20 A They were there for like two seconds and left.

21 Q Is that all you know about these gentlemen?

22 A That is all.

23 Q And were there two black gentlemen from Syracuse?

24 A Mm-hmm.

25 Q And you don't know anything else about them, right?

1 A No, I didn't.

2 Q What about the meeting that you had with Mr.
3 Brooks and Mr. Baer at Mr. Baer's home on the
4 night of December 5th, and do you recall that?

5 A Yes.

6 Q And did you have some contact with Mr. Brooks,
7 isn't that correct?

8 A Well, Mr. Brooks came over to Dick's house, and
9 Dick wasn't there, and he wanted to go over and
10 see Jim.

11 Q Jim who?

12 A Jim Baer. We were going to do some singing
13 together.

14 Q Pardon?

15 A I wanted to go over and do some singing with him,
16 and I had Jerry take me over.

17 Q And you went with Mr. Brooks and Mr. LaMont?

18 A No.

19 Q And Mr. LaMont didn't go along but you went to Mr.
20 Baer's house, isn't that correct?

21 A Right.

22 Q And that was maybe three or four miles away?

23 A Right.

24 Q At the other end of town. And you had a con-
25 versation with Mr. Baer and Mr. Brooks about some

1 sale of marijuana, didn't you?

2 A No, I didn't.

3 Q You didn't?

4 A No, I was upstairs singing with Jim. I didn't talk
5 about marijuana at all.

6 Q Were you smoking marijuana that night?

7 A Maybe just a little bit, upstairs.

8 Q You had smoked marijuana on a number of occasions,
9 hadn't you?

10 A Once in awhile, yes.

11 Q And did Mr. Brooks give you some cocaine?

12 A No.

13 Q And did you ever use it?

14 A I used it once.

15 Q More than once?

16 A No.

17 Q So you did go down, then, to Endicott, and that
18 was in Endicott, New York, where Mr. Baer lives?

19 A Right.

20 Q And this was on December 5th of 1976?

21 A I don't know the date.

22 Q But you deny having any conversation about selling
23 any marijuana to anybody?

24 A That's right, because I didn't.

25 Q Were you on welfare at this particular time?

1 A I wasn't on welfare, no.

2 Q Pardon?

3 A No.

4 THE COURT: At what time?

5 MR. SCELSI: At this particular
6 time.

7 THE COURT: What time?

8 MR. SCELSI: December 5th, 1976.

9 THE COURT: I don't know what you
10 are talking about.

11 MR. PAVONE: I think that Mr.
12 Scelsi means 1975, and not 1976.

13 MR. SCELSI: I am sorry. I am
14 referring to 1975.

15 THE COURT: Now. put your question
16 in a time frame. Were you on welfare in
17 December of 1975?

18 THE WITNESS: No, I wasn't.

19 BY MR. SCELSI:

20 Q You had been on and off welfare for a period of
21 time, isn't that correct?

22 A That is correct.

23 MR. PAVONE: I object to the
24 questions regarding the welfare. I don't
25 see any relevance for this proceeding.

1 THE COURT: Sustained, but you
2 are a little tardy. Wake up.

3 BY MR. SCELSE:

4 Q Let me ask you this: Did you ever have any
5 problems with welfare, because --

6 MR. PAVONE: Objection.

7 THE COURT: Sustained.

8 BY MR. SCELSE:

9 Q Now, I believe that you stated you are presently
10 divorced?

11 A That's right.

12 Q When did you get divorced?

13 A On May 3rd, 1975.

14 Q Now, prior to that you say that you were living
15 with Mr. Sampson, on December 5th, 1975, is that
16 correct?

17 A That is correct.

18 Q And how long had you been living with him?

19 A Maybe a month.

20 Q And before that were you living with Mr. Baer?

21 A Yes.

22 Q So this is the gentleman to whose house you went
23 to, supposedly to sing, isn't that correct?

24 A That is correct.

25 Q And Mr. Brooks drove you down?

- 1 A Right.
- 2 Q And where was Mr. Sampson at this particular time?
- 3 A He was out working.
- 4 Q And isn't it true that on Friday the 5th he left
- 5 for Cleveland?
- 6 A He left for Cleveland?
- 7 Q To visit his mother?
- 8 A No, he didn't leave me there alone.
- 9 Q All right. Are you telling us that you didn't
- 10 know that Mr. Sampson left on Friday, December 5th,
- 11 to go visit his mother in Cleveland for the
- 12 weekend?
- 13 A December the 5th?
- 14 A I don't know. That could have been when I was in
- 15 my own trailer.
- 16 Q As a matter of fact, Mr. Sampson asked you to
- 17 leave the house, isn't that correct, and get your
- 18 own place to live?
- 19 A He didn't ask me to leave. I left on my own.
- 20 Q So actually you were only living in the trailer
- 21 from what date? What date did you move in?
- 22 A I don't know. I don't keep track of dates.
- 23 Q Well, you don't keep track of dates?
- 24 A No, I don't.
- 25 Q They are not important?

1 MR. PAVONE: Objection.

2 THE COURT: Sustained.

3 BY MR. SCELSI:

4 Q And at the time that you were living with Mr.
5 Sampson, when you moved in with him, you didn't
6 have your child, isn't that correct?

7 A That is correct.

8 THE COURT: I don't see the
9 relevancy or materiality of this, and unless
10 we get something relevant or material we are
11 going to terminate your cross-examination.

12 BY MR. SCELSI:

13 Q All right. Now, let's get back to your testimony,
14 then, of Last Friday. You say that you were
15 subpoenaed to come here?

16 A To come here?

17 Q Yes.

18 A Yes.

19 Q Did you have -- you didn't want to testify --

20 THE COURT: (Interrupting)
21 Sustained.

22 BY MR. SCELSI:

23 Q Now, on the morning of December 10th, you had
24 been living in your trailer, right?

25 A Right.

1 Q For approximately three or four days, is that
2 correct?

3 A About three or four days.

4 Q And did Jerry Brooks spend any time with you
5 overnight at that trailer?

6 MR. PAVONE: Objection, your
7 Honor.

8 THE COURT: Sustained.

9 MR. SCELSI: I may submit --

10 THE COURT: (Interrupting)
11 Sustained. Next question.

12 BY MR. SCELSI:

13 Q And about what time did you get over to Debbie
14 Buchanan's apartment?

15 A I left my trailer about -- it was in the morning
16 about 10 or 10:30.

17 Q And you testified -- you stated that you went
18 over there with your child, is that correct?

19 A That is correct.

20 Q How did you get there?

21 A I walked.

22 Q And you had gone to see Debbie to have her baby sit
23 for your child on that particular date?

24 A Not in the beginning. Debbie and I were talking,
25 and she said to go down and talk to Welfare about

1 fuel, and then I had her baby sit.

2 Q What time did you start hitchhiking up to
3 Binghamton?

4 A It was maybe about 11 in the morning or so.
5 After I got there a short while.

6 Q Do you recall talking to the Sheriff's Department,
7 Officer Avery, and Harvey Milks, isn't that
8 correct?

9 A Correct.

10 Q And you talked to them on two occasions on the
11 11th of December, 1975?

12 A Yes.

13 Q And again on the 15th of December?

14 A I don't know the date, but I know that I talked
15 to them again.

16 Q And you were asked that question, and you said
17 then it was around 3 o'clock that you started
18 hitchhiking to Binghamton?

19 A Three o'clock? Ten o'clock? I don't know.

20 Q Well, if I told you that you stated that you,
21 on December 11th, and on December 15th, that you
22 started hitchhiking at three o'clock, would your
23 memory have been better then, then it is now?

24 A Probably, I don't know. Like I said, I don't
25 keep time nor dates.

1 Q Now, you were not living in the trailer at 5
2 Hampton Street on the night of Sunday, December
3 7th, were you? You were in your trailer isn't
4 that correct?

5 A That is correct.

6 Q And do you recall Mr. Sampson coming over to talk
7 to you?

8 A Yes. He was trying to get me to go back with him.

9 Q Pardon?

10 A He was trying to get me to go back with him and
11 come back and live with him and I told him I
12 couldn't.

13 Q And isn't it true at this time that there was a
14 discussion about the sale of marijuana to Brooks,
15 and you were involved in it?

16 A No.

17 THE COURT: Come on up to the
18 bench.

19 (Whereupon, the following took
20 place, out of the hearing of the jury.)

21 THE COURT: I want an offer of
22 proof. So what? So she discussed this
23 marijuana, and she discussed the sale of
24 marijuana. So what?

25 MR. SCLESI: This whole event was

1 one event, your Honor.

2 THE COURT: You mean people have
3 a right to kidnap somebody because they
4 were in the drug field?

5 MR. SCELSI: If she is going to
6 lie on the stand -- I have witnesses who will
7 testify that they had this conversation.

8 THE COURT: I don't see any
9 relevancy or any materiality. You are not
10 charged with drugs, but kidnapping.

11 MR. SCELSI: That is true, but
12 she was involved in this entire situation
13 from the beginning.

14 THE COURT: So what?

15 MR. FINER: She denies knowledge
16 of this.

17 THE COURT: Of what?

18 MR. FINER: Any drugs or anything
19 else.

20 MR. SCELSI: On the stand she
21 denied everything.

22 THE COURT: Put some direct
23 questions to her and see what she says.
24 Cross examine her.

25 (Whereupon, the following took

1 place before the Court and jury.)

2 BY MR. SCELSI:

3 Q Last Friday when you testified you stated that
4 when you were in the car with Mr. Cavallaro, you
5 didn't know what he was talking about, about any
6 rip-off, is that correct?

7 A I told him I didn't know about it.

8 Q And you are denying that you had any conversation
9 with Mr. Sampson two days previously, or three
10 days previously, on December 7th, relative to a
11 drug --

12 THE COURT: (Interrupting)

13 Wait a minute. She said she told your client
14 she didn't know anything about it. What are
15 you trying to do? Are you trying to prove
16 that that was a lie? What she told your
17 client, or that she is lying on the stand?
18 There is a difference, Mr. Scelsi. That is
19 the very point that I just finished talking
20 to you about.

21 BY MR. SCELSI:

22 Q Let me ask you this: Did you have a conversation
23 with Sampson, yes or no, on the night of December
24 7th, about this drug situation?

25 A No.

1 Q All right, thank you. Now, getting back to the --
2 you say time doesn't mean anything to you, but
3 a certain time on December --

4 MR. PAVONE: (Interrupting)

5 Objection.

6 THE COURT: Sustained. Put your
7 question.

8 BY MR. SCELSI:

9 Q On a certain time you started hitchhiking to
10 Binghamton?

11 A That is right.

12 Q And did you get to the Welfare office?

13 A Yes.

14 Q And what happened?

15 A I went in the Welfare office, and they gave me
16 papers to fill out, and take them home.

17 Q You had been there before, hadn't you?

18 A Right.

19 THE COURT: I am sorry, I did
20 not hear the answer.

21 THE WITNESS: Yes.

22 BY MR. SCELSI:

23 Q And when you were at the Welfare office, on the
24 way up you rode up with a fellow by the name of
25 Uslip, is that right?

1 A Yes, sir.

2 Q And he needed money for gas, isn't that correct?

3 A Yes.

4 Q And did you give him the money for gas?

5 A I gave him \$2 for gas.

6 Q You testified last Friday that you didn't have
7 any money on that particular date, isn't that
8 correct?

9 A I had a couple of dollars, but not enough to get
10 gas for the trailer.

11 Q Prior to riding to Binghamton with this person
12 by the name of Uslip, were you hitchhiking, and
13 picked up by a Thunderbird, is that correct?

14 A That is correct.

15 Q And that is the same car that you went in later
16 that night?

17 A Yes.

18 Q And when you got in it -- you didn't know who was
19 driving the car until you got in it, did you?

20 A No.

21 Q And when you got in, Mr. Cavallaro was there,
22 isn't that correct?

23 A Yes.

24 Q And then what did you do prior to going to
25 Binghamton?

1 A Going to Binghamton?

2 Q Prior to going to Binghamton? Didn't you stop
3 and have a conversation with Mr. Cavallaro at
4 McDonald's, which was across the street from
5 your apartment?

6 A We didn't have a conversation.

7 Q Did you have a conversation about seeing him
8 later that evening?

9 A No.

10 Q And did you have any conversation about this
11 Jerry Brooks?

12 A No. We came back and we -- from there they took
13 off. They dropped me off and left.

14 Q They didn't talk to you anything about Jerry Brooks
15 or where he lived, or anything?

16 A No.

17 Q Now, they picked you up on this particular after-
18 noon, and there wasn't anybody else around, isn't
19 that correct? They picked you up on the street?

20 A Right.

21 Q And to your knowledge no one saw you get in the
22 car, isn't that correct?

23 A That is correct.

24 Q And they went around the block, and then dropped
25 you off, and you went to Binghamton?

- 1 A Right.
- 2 Q And did you ask Mr. Cavallaro for some money?
- 3 A No.
- 4 Q And did he give you \$40?
- 5 A No.
- 6 Q Now, you stated on examination yesterday -- I
- 7 mean Friday -- that you didn't know Mrs. Cavallaro
- 8 too well, isn't that correct?
- 9 A Right.
- 10 Q And isn't it a matter of fact that she used to
- 11 baby sit for you?
- 12 A Right.
- 13 Q On occasions?
- 14 A Right.
- 15 Q When you were going with Mr. Baer?
- 16 A Right.
- 17 Q And so you got to know her fairly well, isn't
- 18 that correct?
- 19 A Pretty good, I guess. I didn't know her that well.
- 20 Q But you were up to her house on a number of
- 21 occasions, weren't you?
- 22 A Yes.
- 23 Q And you knew her well enough to entrust her to
- 24 care for your baby, didn't you?
- 25 A Yes, sir.

1 Q And you got to know her?

2 A Yes.

3 Q And you knew Mr. Cavallaro for over two years,
4 isn't that correct?

5 A I don't think it was over two years. I don't think
6 it was two years.

7 THE COURT: About how long was
8 it?

9 THE WITNESS: Maybe a year.

10 BY MR. SCELSE:

11 Q And you would leave the baby at Cavallaro's while
12 you would go out with Mr. Baer, isn't that
13 correct?

14 A Right.

15 Q And you would go to carnivals and different other
16 things?

17 A Right.

18 Q Now, there came a time, then, that you came back
19 to Johnson City, is that correct?

20 A Right.

21 Q And if your statement is correct -- well, let me
22 ask you this for the benefit of the jury: You had
23 to go to Binghamton, which is approximately how
24 far from Camden Street, where you were? Was it
25 five or six miles?

1 A Maybe five or six miles.

2 Q And did you go straight up Main Street to get to
3 Binghamton?

4 A We went, and we got in another car.

5 Q How did you get to Binghamton?

6 A How?

7 Q Well, let me ask you this: How long were you
8 gone before you came back? An hour or an hour
9 and a half?

10 THE COURT: What are we talking
11 about? The welfare visit, or what?

12 MR. SCELSI: Yes.

13 BY MR. SCELSI:

14 Q According to the statement that you gave Mr. Milks
15 the day of all of these incidents on December 11th,
16 you were gone -- at three o'clock you started
17 hitchhiking on your way to Binghamton, isn't
18 that correct?

19 A Yes.

20 Q And all I am asking you now is how long were you
21 gone?

22 A Approximately an hour or an hour and a half.

23 Q All right. And when you got back, did you talk
24 to Mr. Cavallaro at that time?

25 A They just said -- they just dropped me off, and

1 they took off.

2 Q So you did talk to Mr. Cavallaro when you got back
3 also, isn't that correct?

4 THE COURT: Did Cavallaro bring
5 you back from the Welfare office?

6 THE WITNESS: No.

7 THE COURT: Well, was he -- where
8 did you go when you came back from the
9 Welfare office?

10 THE WITNESS: I came back and
11 then Dick, Finch, and I went down to see my
12 boss.

13 THE COURT: Who brought you back
14 from the Welfare office?

15 THE WITNESS: "Worthless" or
16 "Useless."

17 THE COURT: "Useless" brought
18 you back?

19 THE WITNESS: Right.

20 THE COURT: And where did you
21 go when you came back?

22 THE WITNESS: I came back to
23 Debbie's house.

24 THE COURT: And who did you see
25 when you got to Debbie's house? Did you see

1 Cavallaro?

2 THE WITNESS: I can't remember --

3 I don't think Cavallaro was there.

4 THE COURT: All right. Next
5 question.

6 BY MR. SCELSI:

7 Q You can't remember, is that right?

8 A That's right.

9 Q Could you have talked to him when you got back,
10 if you can remember?

11 A I can't remember. I know that we were trying to
12 get something -- no way. I know that Dick took me
13 to get fuel right after I got back, because I
14 couldn't get any welfare money.

15 Q So at 4:30 then you are telling us that Mr. Finch --
16 I believe it is Fitch -- Mr. Fitch took you down
17 to your place of employment, is that correct?

18 A That is correct.

19 Q And then from there did you come right back?

20 A No, we went to look for fuel.

21 Q And about 6 o'clock you called Jerry Brooks, didn't
22 you?

23 A No, I didn't call Jerry.

24 Q Are you sure of that?

25 A Yes.

1 Q He was in Syracuse at the time, wasn't he?

2 A I guess so.

3 MR. PAVONE: Objection. She
4 said that she didn't know, and didn't talk
5 to him.

6 THE COURT: Do you know whether
7 he was in Syracuse? That is the question.

8 BY MR. SCELSI:

9 Q Do you know whether he was in Syracuse?

10 A Yes.

11 Q He was, wasn't he?

12 A Yes, because Dick told me that is where he lived.

13 Q And you knew how to get a hold of him, didn't you?

14 A I had no idea of how to get a hold of Jerry.

15 Q And then you went out and got some groceries?

16 A Right.

17 Q And let's fix a time for that. Was that around
18 five o'clock?

19 A I think it was a little later, because it was dark
20 when I came back.

21 Q Do you recall where you went?

22 A I went down to the shopping center.

23 Q Now, you got back and I am not too clear as to
24 when Debbie got a phone call from Mr. Baer. You
25 were there when she got the call?

1 A No.

2 Q Are you sure of that?

3 A I am positive.

4 Q And when you went in she mentioned the telephone
5 call from Mr. Baer, isn't that correct?

6 A Correct.

7 Q And isn't it correct that she told you that Mr.
8 Baer was going to come with Mr. Cavallaro, and
9 another gentlemen, to see you?

10 A They just told -- she told me that they were
11 coming down.

12 Q To see you and talk to you, right?

13 A Yes.

14 Q And they were interested in getting an address,
15 right?

16 A Right.

17 Q And didn't she also tell you that you might go for
18 a ride with them to discuss the situation further?

19 A No, she didn't.

20 Q Are you sure of that?

21 A Positive.

22 Q And in any event you stated that, isn't that
23 correct?

24 A Yes.

25 Q And you were there anywhere from a half hour more

1 before a gentleman came into your apartment, isn't
2 that correct, where you were?

3 A I don't know how long I was there.

4 Q You didn't leave, did you?

5 A She told me not to, so I didn't.

6 Q Debbie told you not to?

7 A Right.

8 Q And you didn't receive a call, yourself, from
9 anyone in telling you not to leave, did you?

10 A No.

11 Q At approximately 10 o'clock that night, or so,
12 according to your testimony, the fellow did come
13 into the apartment, isn't that correct?

14 A Yes.

15 Q And it would be -- was he the same fellow that
16 you saw that afternoon that you thought maybe
17 was a car salesman?

18 A Right.

19 Q And you knew then that he was with Mr. Cavallaro?

20 A I didn't know that he was with Mr. Cavallaro, no.

21 Q Now, actually you were in the kitchen, when the
22 man came to the door, isn't that correct?

23 A Yes.

24 Q And did you hear him say anything?

25 A He just asked where I was.

1 Q Asked where was Mary, right?

2 A Yes.

3 Q Because you were out of view of the front door,
4 isn't that correct?

5 A Right.

6 Q Now, when he came out, the two of you or actually
7 the three of you engaged in a conversation, isn't
8 that correct?

9 A He just said that Dave wanted me, you know, wanted
10 to talk to me.

11 Q And Dave was in the car, isn't that right?

12 A Yes.

13 Q And your baby was on the floor, at that time?

14 A He was in the crib.

15 Q In the crib. And you talked about your son at
16 that time, also, didn't you?

17 A He said what a cute son he was; what a cute kid.

18 Q And you talked about the names, right?

19 A He asked what his name was, and I said, "Jasen."

20 Q And then he told you that his son had the same
21 name, isn't that correct?

22 A Yes.

23 Q So you were there more than a minute or two,
24 and you were there and engaged in a conversation
25 about children, isn't that correct?

1 A Yes, for a couple of minutes.

2 Q And he showed you a tattoo on his arm with the
3 name Jason?

4 A No, he didn't.

5 Q And you got your coat, and there was a time that
6 you left with him to get in the car, right?

7 A Right.

8 Q And when you walked out, you got to the -- the
9 car was parked right outside, isn't that correct?

10 A Yes.

11 Q And isn't it true that right out in front of the
12 house was a street light?

13 A Mm-hmm.

14 Q And it was setting right under the street light
15 in plain view of anyone in the house, or anyone
16 walking down the street, isn't that correct?

17 A Yes.

18 Q And right across the street was the McDonald's
19 parking lot which was completely lit up, also,
20 isn't that correct?

21 A I don't know. I didn't pay any attention to
22 whether it was lit up or not.

23 Q There was a McDonald's parking lot across the
24 street?

25 A Yes.

- 1 Q Now, when you got in the car, you knew that you
2 were going for a ride, isn't that correct?
- 3 A Well, they told me I was going to go for a ride.
- 4 Q As a matter of fact, you knew it before or re-
5 iterated in the afternoon that they were going
6 to come back and talk to you that night, isn't
7 that correct?
- 8 A No.
- 9 Q Well, you knew that they were coming for half an
10 hour or more, didn't you?
- 11 A Yes.
- 12 Q Now, when you got back that particular evening
13 it was around 1:30, is that correct?
- 14 A I don't know what time it was. I know that
15 Dick Fitch was home from work.
- 16 Q Pardon?
- 17 A Dick Fitch got home around that time from work,
18 and he was home.
- 19 Q And I believe that you testified that you had
20 another glass of beer? You wanted a beer?
- 21 A Yes.
- 22 Q And then you went to sleep, didn't you?
- 23 A Yes.
- 24 Q And you didn't call the police, did you?
- 25 A No.

1 Q And Mr. Fitch didn't call the police, did he?

2 A No.

3 Q And Mr. Sampson was upstairs at that particular
4 time, isn't that correct?

5 A I don't know. I don't know.

6 Q You don't know?

7 A I don't know that he was upstairs.

8 Q And during this ride into Pennsylvania, and
9 incidentally, Pennsylvania is about five miles
10 from where you were?

11 A I don't know the mileage to it.

12 THE COURT: From where you were?

13 BY MR. SCELSI:

14 Q From 5 Camden Street, in Johnson City, and isn't
15 it true that to get to Pennsylvania you go down
16 Route 26 approximately a mile west, and then
17 straight south into Pennsylvania?

18 THE COURT: I will take
19 judicial notice that it is about five miles.

20 MR. SCELSI: Thank you.

21 THE COURT: From Endicott.

22 BY MR. SCELSI:

23 Q And while you were in Pennsylvania you were at
24 Red Park, isn't that correct?

25 A Yes.

1 Q And you were there about how long, again?

2 A Maybe an hour.

3 Q Or an hour and a half?

4 A An hour and a half.

5 Q And you had drinks there?

6 A Yes.

7 Q And you talked further about this situation,
8 isn't that correct?

9 A Yes.

10 Q And isn't it true that Mr. Cavallaro and Mr. Brown --
11 withdraw that. I will rephrase that question.

12 Now, you were in the bar for an
13 hour or an hour and a half, isn't that correct?

14 A Yes, that is correct.

15 Q And there were a number of people in the bar,
16 five or six other people, isn't that right?

17 A Yes.

18 Q Sure, and you didn't talk to any of them?

19 A No.

20 Q Well, Mr. Pavone concluded by asking you a
21 number of questions and actually, with respect to
22 this ride, the ride itself, you weren't mistreated
23 in the car, were you?

24 A Not physically no. It was just my hands were
25 held.

1 Q And this is on the way back, isn't that correct?

2 A No, on the way up.

3 Q And isn't it true that in front of the Grand Jury
4 you testified that you were turned around talking
5 to Mr. Brown, when you got in the car, is that
6 correct?

7 A That is correct.

8 Q And what kind of a -- you were in the front seat?

9 A Mm-hmm.

10 Q And you were turned around looking to your rear,
11 talking to Mr. Brown, about the situation, correct?

12 A Yes.

13 Q And back to approximately 6 or 7 p.m., when Debbie
14 told you that she had a phone call and you did not
15 have to stay and you could have left, isn't that
16 correct?

17 A I would --

18 Q (Interrupting) Just answer the question yes or
19 no.

20 THE COURT: It is not very clear.
21 Make your question clear, and I
22 will allow her to answer.

23 BY MR. SCELSE:

24 Q When you got back, presumably from grocery shop-
25 ping, and you walked into the house and Debbie

1 said that you had a phone call, she told you to
2 stay, isn't that correct? That is what you are
3 telling us?

4 A Right.

5 Q But you could have left, isn't that correct?

6 A Yes.

7 Q But you stayed because you knew that Mr. -- that
8 you were to see Mr. Cavallaro and talk to him,
9 again, later on, is that correct?

10 A They said that they were just coming over.

11 Q And they told you in the afternoon that they were
12 going to see you again at night, isn't that
13 correct?

14 A I don't remember that.

15 Q Could they have told you?

16 A I don't remember.

17 Q Isn't it true that after talking to all of the --
18 to the various police agencies from Binghamton,
19 and in Tioga County, you talked to the Federal
20 Bureau of Investigation?

21 A Yes.

22 Q And they insisted that you push through with
23 the situation?

24 MR. PAVONE: Objection.

25 THE COURT: Sustained.

1 Now, look, did they insist that
2 you push through?

3 THE WITNESS: No.

4 BY MR. SCELSE:

5 Q No? You have been getting some support from the
6 government since then, haven't you?

7 A A little, yes.

8 Q And they made it a situation that in spite of
9 your past you could now have your child, didn't
10 they?

11 THE COURT: I couldn't hear it.

12 BY MR. SCELSE:

13 Q They set up the child so that you could get your
14 child back?

15 A I had it before that.

16 Q Mr. Sampson got it for you, isn't that correct?

17 A We got it back together, yes.

18 Q And you went and told the Welfare Department that
19 you were going to marry Mr. Sampson, isn't that
20 correct?

21 A That is correct.

22 Q And based upon this they gave you back your
23 child, isn't that correct?

24 A Yes.

25 Q But then you moved out on him, and didn't marry

1 him, isn't that right?

2 A Yes.

3 MR. SCLESI: That is all.

4 THE COURT: Mr. Finer?

5 BY MR. FINER:

6 Q Miss Shepherdson, last Friday you testified that
7 there was a gentleman came to see you on December
8 10th at around 10 o'clock, who you said sometime
9 later that you identified him as Jerry Brown, is
10 that correct?

11 A Yes.

12 Q And at the time when he came to the apartment
13 did he physically harm you at all?

14 A No.

15 Q And did he threaten you in any way at that time?

16 A No.

17 Q You recall the weather conditions at that time?
18 Was it cold out?

19 A Yes, it was.

20 Q And this gentleman also asked you, or suggested
21 to you, that you get your coat?

22 A Yes, he told me it was cold out.

23 Q And you got your coat?

24 A Right.

25 Q And then after that, did he escort you outside?

1 that time?

2 A Well, he told me that he was going to stick to
3 me like glue, and I hadn't better try anything,
4 and he was going to be, you know, right there
5 with me.

6 Q Did he buy a drink for you?

7 A Everything -- yes.

8 Q He bought drinks for everybody?

9 A Yes.

10 Q Then on the way back from the bar you came back
11 to New York State, is that correct?

12 A Right.

13 Q And they stopped somewhere so that you could go
14 to the bathroom, isn't that correct?

15 A They stopped by David Baer's house; at his house.

16 Q And at that time did you go to the bathroom, is
17 that correct?

18 A Yes.

19 Q During the transaction, were you close, physically,
20 or standing or sitting close to Mr. Brown at
21 any time?

22 THE COURT: What transaction?

23 BY MR. FINER:

24 Q During the ride from the apartment to the bar
25 and back again to the apartment -- they picked

1 you up and dropped you off at the same place is
2 that correct?

3 A That is correct.

4 Q And were you close to the man that you just
5 identified as Mr. Brown?

6 A Yes.

7 Q And you were face to face to him?

8 A Yes.

9 THE COURT: How long were you
10 in the bar, the Red Bar?

11 THE WITNESS: Possibly an hour;
12 an hour and a half.

13 THE COURT: What were the
14 lighting conditions there?

15 THE WITNESS: I don't think it
16 was too light.

17 THE COURT: How long were you
18 next to Mr. Brown? Was he next to you, or
19 where?

20 THE WITNESS: He was sitting
21 right in front of me.

22 THE COURT: Across the table?

23 THE WITNESS: Right.

24 THE COURT: For an hour?

25 THE WITNESS: It might not have

1 been that long. I don't know.

2 THE COURT: And at Debbie's house,
3 what were the lighting conditions?

4 THE WITNESS: In Debbie's house
5 it was dark.

6 THE COURT: Dark, and the lights
7 weren't on?

8 THE WITNESS: There was no light
9 in the kitchen. and there was lights in the
10 kitchen but the baby was sleeping but that
11 was the front room.

12 THE COURT: Could you see Mr.
13 Brown's face when he came in to pick you up?

14 THE WITNESS: In the kitchen,
15 yes.

16 THE COURT: How long did he stay
17 there?

18 THE WITNESS: Not any more than
19 five minutes.

20 BY MR. FINER:

21 Q You also testified that Debbie had told you about
22 a telephone call where they had advised you that
23 they were coming over to talk to you?

24 A Yes.

25 Q And after you were informed of that did you call

1 the police at that time?

2 A No.

3 Q And you said that you didn't call the police when
4 you returned?

5 A No.

6 Q Either. Did you at any time -- well, strike that.
7 When they first picked you up and took you to this
8 vehicle did you refuse to get in the vehicle?

9 A No.

10 Q You said that you were living with Mr. Sampson
11 at this time, isn't that correct?

12 A No, I was living by myself.

13 Q And prior to your moving to the trailer, did you
14 live with Mr. Sampson?

15 A Yes.

16 Q Did you have a key to the apartment?

17 A No, I had -- no, I had the key when I was living
18 with him, yes.

19 Q All right. On December -- this would be the day
20 before the alleged kidnapping attempt, and did
21 you let a Mr. Brooks into Mr. Sampson's apartment?

22 A No.

23 THE COURT: What was David's
24 last name in the car?

25 THE WITNESS: Baer.

1 BY MR. PAVONE:

2 Q Who is Jerry Brooks? He is a new name that came
3 up in your cross-examination?

4 A Jerry Brooks is the one that did the rip-off deal.

5 Q He is a black man from Syracuse?

6 A Right.

7 Q Now, when you returned home to the apartment at
8 Camden Street, Debbie told you not to leave?

9 A Yes.

10 Q Why did she say that?

11 A Because Dave had been beaten up.

12 MR. SCELSI: I will object to that

13 as hearsay.

14 THE COURT: I didn't hear it.

15 (The previous answer was read

16 by the reporter.)

17 THE COURT: No, go ahead.

18 BY MR. PAVONE:

19 Q Why didn't you leave?

20 A Debbie told me I hadn't better leave.

21 Q Were you frightened?

22 A Yes, and when I came to the door, she frightened
23 me by just asking me if I was all right.

24 Q Now, when Mr. Brown came to pick you up later
25 that evening, did he put his hand on you when he

1 was escorting you to the car?

2 MR. FINER: I will object as a
3 leading question.

4 THE COURT: I think it is all
5 right: overruled.

6 BY MR. PAVONE:

7 Q You may answer.

8 A I think he put his hand on my shoulder. I can't
9 remember that.

10 Q And why did you get in the car when he told you
11 to get in the car?

12 MR. FINER: I object.

13 THE COURT: Overruled.

14 THE WITNESS: He was standing
15 right in back of me.

16 BY MR. PAVONE:

17 Q Now, this incident in the bar, when you stopped
18 in the bar in Pennsylvania --

19 THE COURT: (Interrupting)
20 Wait a minute. Had he told you that David
21 Baer was in the car?

22 THE WITNESS: Yes.

23 THE COURT: Who was David Baer,
24 to you?

25 THE WITNESS: David Baer was

1 an ex-boyfriend of mine.

2 THE COURT: How long had he
3 been an ex-boyfriend?

4 THE WITNESS: How long?

5 THE COURT: How long?

6 THE WITNESS: He had been about
7 three or four months, maybe five months.

8 THE COURT: And had you and he
9 been pretty close?

10 THE WITNESS: Well, we were
11 close, but we had our disagreements.

12 THE COURT: Well, you had been
13 living with him, hadn't you?

14 THE WITNESS: Yes.

15 BY MR. PAVONE:

16 Q Did you observe David Baer's appearance when you
17 were standing by the car?

18 Yes.

19 Q And would you describe his appearance?

20 A His nose was swelling, and he was just sitting
21 back there.

22 Q And did that frighten you?

23 A Yes, because I had never seen Dave like that.

24 Q You testified that, at a point in time on the car
25 ride you stopped into a bar in Pennsylvania, is

1 that correct?

2 A Correct.

3 THE COURT: We are not going to
4 go over all of that direct, are we?

5 MR. PAVONE: I am almost finished.

6 BY MR. PAVONE:

7 Q Did that take place before or after the shooting
8 incident?

9 A After.

10 Q Now, when you were driving in the car, you testified
11 on cross-examination --

12 THE COURT: (Interrupting)
13 She was not driving in the car. Did you
14 ask her if she was riding or driving?

15 MR. PAVONE: When she was riding
16 in the car, I am sorry.

17 BY MR. PAVONE:

18 Q When you were riding in the car you testified
19 on cross-examination that you had turned around
20 and were facing Brown in the back seat. Is that
21 right?

22 A Yes.

23 Q And did Mr. Brown have his hands on you at that
24 time?

25 A Yes.

1 Q And what was he doing?

2 A He was holding my wrists.

3 THE COURT: Both wrists?

4 THE WITNESS: Yes, both wrists.

5 THE COURT: And you were turned
6 around facing him, is that it?

7 THE WITNESS: Yes.

8 THE COURT: And were your arms
9 up over the back seat?

10 THE WITNESS: Mm-hmm.

11 BY MR. PAVONE:

12 Q Now one more question: Were you promise
13 anything for testifying here today, by the
14 government?

15 A No.

16 MR. PAVONE: That is all I have,
17 your Honor.

18 THE COURT: Cross-examination?

19 RE-CROSS-EXAMINATION

20 BY MR. SCELSE:

21 Q Last Friday you said that your hands were down
22 behind you. Now, were they down or up?

23 A They were down.

24 Q And as a matter of fact --

25 THE COURT: (Interrupting) Just

1 a minute, down behind you? Stand up and
2 show us how your hands were.

3 THE WITNESS: They were in back
4 like this (indicating).

5 THE COURT: And which way were
6 you facing?

7 THE WITNESS: He had me turned
8 around.

9 BY MR. SCELSE:

10 Q And as a matter of fact, your hands were not
11 being held at all, were they?

12 A Yes, they were.

13 Q Did the FBI tell you to say that?

14 A No.

15 Q Is that what Worst told you?

16 A No.

17 Q And we have got four statements here, or three
18 statements, and when you were giving the statement
19 to Mr. Avery, and Captain Mills, or Lieutenant
20 Avery on December 11th, you never told them that
21 your hands were being held, did you?

22 A How are you supposed to remember everything that
23 happens when you are like this?

24 Q Because that is the way that it happened and
25 that is why --

THE COURT: (Interrupting) Please

save your arguments.

BY MR. SCELSI:

Q And on December 15th, you never told anyone that your hands were being held, did you?

A No, I guess not.

Q And you never told anyone that your hands were being held until you came into court here last Friday, isn't that correct?

A I don't know.

Q Isn't it true that you were told by the FBI, Mr. Worst, or Mr. Chandler that in order for you to prove a case of kidnapping that you were going to have to testify that somebody held you, and held your arms, isn't that correct?

A That is not correct.

Q Not correct?

A No.

Q Yet you are aware that the information for kidnapping wasn't made until December 17th, some six days after this alleged incident?

A Yes.

Q All right. And they never bothered having a preliminary examination because they didn't want you in court to testify?

1 MR. PAVONE: Objection.

2 THE COURT: Sustained.

3 BY MR. SCELSE:

4 Q Well then, it will suffice that before testifying
5 at the Grand Jury you did talk to Mr. Worst and
6 Mr. Chandler, or any of the FBI --

7 THE COURT: (Interrupting) She
8 already said she did. I hope she did.

9 MR. PAVONE: For the record,
10 there is no Mr. Chandler that I know of from
11 the FBI.

12 THE COURT: She certainly talked
13 to the FBI agent.

14 MR. PAVONE: I think he is from
15 the State Police.

16 BY MR. SCELSE:

17 Q And to your knowledge, these two defendants were
18 never arrested for kidnapping Mr. Baer, were they?

19 A I don't know. He was right along with me.

20 Q He was right along with you, wasn't he?

21 A Right.

22 Q And if I told you that they weren't arrested for
23 kidnapping him --

24 MR. PAVONE: Objection.

25 THE COURT: Sustained. If she

1 THE WITNESS: She told me that
2 Tony had been ripped off for some marijuana,
3 and then Jerry Brown and Tony told me about
4 it more when we were in the car.

5 BY MR. SCELSI:

6 Q And the fellow that did the ripping off was
7 Jerry Brooks, whom you had spent December 5th
8 with, isn't that correct?

9 A I don't know what time it was, or what day.

10 Q And it was prior to the 10th of December, wasn't
11 it?

12 A It was way before this happened.

13 Q And you had seen Mr. Brooks on a number of
14 occasions up in Mr. Sampson's apartment when you
15 were living with him, isn't that correct?

16 A Very seldom did he come up.

17 Q Just one more question: Was Jerry Brooks ever
18 in your trailer with you; yes or no?

19 A Yes.

20 Q He was in your trailer -- you just, ten minutes
21 ago, said he never was. He was in your trailer,
22 isn't that correct?

23 A He came down -- he came down for two minutes
24 and left.

25 Q Are you sure he didn't spend a couple of nights

1 with you?

2 A He did not spend a couple of nights with me.

3 Q Did you ever tell anyone that he did?

4 A No.

5 MR. SCELSI: Thank you.

6 MR. FINER: I have no further
7 questions.

8 MR. PAVONE: None, your Honor.

9 THE COURT: Just a minute.
10 Would you come up?

11 (Whereupon, the following
12 took place at the bench, out of the hearing
13 of the jurors.)

14 THE COURT: Is Agent Worst
15 going to take the stand?

16 MR. PAVONE: I am not quite
17 sure. There is a possibility that he will.
18 If there is an identification problem he will,
19 if it becomes significant and it depends
20 upon that, but I don't know and I do not
21 anticipate any one of them at this time.

22 THE COURT: I think that you
23 are entitled to see this (offering to Mr.
24 Scelsi).

25 (Counsel perused the document.)

1 MR. SCELSI: I am wondering
2 whether she actually did go there. I wonder
3 if the record indicates that she went on
4 there on a date?

5 THE COURT: What day?

6 MR. SCELSI: December 10th. She
7 said that she did. That is her testimony.

8 THE COURT: I don't know.

9 MR. SCELSI: I don't know
10 whether she is telling the truth or not.

11 THE COURT: But it is collateral
12 impeachment, and do you want me to go through
13 this foot and a half record to see if she
14 went to the welfare office?

15 MR. SCELSI: Well, because I am
16 very concerned about the truth of her state-
17 ment, and I think that she is lying through
18 her teeth.

19 THE COURT: They are not chrono-
20 logical. It is almost impossible to re-
21 construct the dates, except from the final
22 report.

23 MR. PAVONE: May I have an
24 opportunity to review that document?

25 THE COURT: Sure, you can take

1 a look at it (offering).

2 MR. SCELSI: The day that she
3 said was in 1975.

4 THE COURT: These are the days
5 of the reports, and not necessarily the
6 dates that she was there. There is no
7 log here or anything, and they are not in
8 chronological order. I will look through
9 them, and if there is -- I can't imagine
10 what motive she would have to lie that she
11 went to welfare. What difference did it
12 make if she did?

13 MR. SCELSI: The motive is,
14 your Honor, that we feel that she tried to
15 prove that she -- well, she got involved
16 in this drug deal, and that she tried to
17 cover up by saying she went to welfare.

18 THE COURT: I don't have any
19 of that in here yet.

20 MR. PAVONE: I think that the
21 witness testified on cross-examination that
22 she went there.

23 THE COURT: But according to
24 the report she said she got excited about
25 being involved in drug deals, and that is the

1 relevant part there, Mr. Pavone. She has
2 not denied it, and you haven't asked it, and
3 if you asked, I wouldn't have had to show it
4 to you, but you didn't ask it yet. There it
5 is. I don't know of any report in here that
6 showed that she did not go to welfare on that
7 date, the date being that date. There is
8 nothing here to indicate that she did not.

9 MR. SCELSI: There is a question
10 of Brooks, and if Brooks is the individual
11 that she just testified did the rip-off, and
12 now she denied talking to Brooks about this
13 rip-off, and I will rephrase the question.
14 That is what I am referring to.

15 THE COURT: That doesn't refer
16 to anybody about the rip-off on December 10th.
17 It is just generally -- well, I hesitated
18 to give this to you. I don't know what you
19 are arguing with me about because I have
20 made it available, and use it.

21 (Whereupon, the following took
22 place before the Court and the jury.)

23 BY MR. SCELSI:

24 Q I want to ask you two or three questions once
25 again, Mrs. Shepherdson. This is relative

1 to your dealing into drugs. Did or did you not
2 have anything to do with Mr. Brooks -- just let
3 me finish the question -- and Mr. Baer in this
4 alleged rip-off around December 5 or 6 or 7 or 8?

5 A No.

6 Q And you deny having any conversation with Mr.
7 Brooks about this rip-off, isn't that correct?

8 A Yes.

9 Q And you are denying, again, that you had a
10 conversation with Mr. Sampson about this rip-off,
11 isn't that correct?

12 A Correct.

13 Q Now, is everything that you are telling the truth
14 today?

15 A Yes.

16 Q About the rip-off, about Mr. Brooks, and about
17 your affairs, and about your inhibitions and so
18 forth, and everything is true that you were telling
19 us?

20 A Yes.

21 Q And now, previously you told me that you had
22 very little to do with drugs, and had marijuana
23 once or twice, is that correct?

24 A I smoked it before, yes.

25 Q Yes. And you said that you had cocaine on one

1 occasion?

2 A Yes.

3 Q Or more?

4 A No, just one time.

5 MR. PAVONE: Excuse me. I
6 believe that we are really plowing the same
7 ground that we have done before.

8 THE COURT: No, let him get to
9 his point.

10 BY MR. SCELSI:

11 Q Have you ever been convicted of any crimes re-
12 lated to drugs?

13 A None.

14 Q Were you ever arrested for any crimes relating
15 to drugs?

16 A No.

17 Q None?

18 A No.

19 Q Did you ever tell anyone that you liked drugs,
20 and drug dealings?

21 A No.

22 Q And you are still telling the truth, aren't you,
23 Mrs. Shepherdson?

24 A Yes.

25 Q And do you know Lieutenant Avery?

1 A Yes.

2 Q And do you remember him?

3 A Yes.

4 Q Now, I would like to read --

5 THE COURT: (Interrupting) Don't
6 read it. The document is not in evidence.

7 MR. SCELSE: May I have it
8 marked for identification?

9 THE CLERK: Defendant's Exhibit
10 A, marked for identification.

11 (Document marked Defendant's
12 Exhibit A for identification.)

13 MR. SCELSE: This is a report
14 of the --

15 THE COURT: (Interrupting) Please
16 just mark it, without any speeches.

17 MR. SCELSE: Thank you.

18 THE COURT: It has a limited use.

19 BY MR. SCELSE:

20 Q You had, on occasion, applied for --

21 MR. PAVONE: (Interrupting)
22 Excuse me. I object to counsel referring
23 to the document any further until he has
24 handed it to the witness and she has had
25 an opportunity to review it.

1 MR. SCELSI: I would like to
2 hand it to her and have her read it, your
3 Honor, and the date (offering to witness).

4 BY MR. SCELSI:

5 Q Would you tell the jury what it is?

6 THE COURT: No, ask her
7 questions.

8 BY MR. SCELSI:

9 Q Whose names are on that record?

10 THE COURT: Sustained.

11 Let me have the document.

12 Obviously you don't know how to use it.

13 Did you ever tell anyone that
14 you enjoyed the excitement of drug use?

15 THE WITNESS: No, I didn't.

16 THE COURT: Did you tell that to
17 Agent Worst?

18 THE WITNESS: No.

19 THE COURT: Did you tell it to
20 Lieutenant Avery?

21 THE WITNESS: No.

22 THE COURT: Did you tell it to
23 Agent Worst?

24 THE WITNESS: No.

25 THE COURT: Did you tell it to

1 Peggy Russell?

2 THE WITNESS: No.

3 THE COURT: Did you ever tell
4 that to Peggy Russell?

5 THE WITNESS: No.

6 THE COURT: And who is Peggy
7 Russell?

8 THE WITNESS: She was a so-
9 called girlfriend that I thought I had.

10 THE COURT: Did you ever tell
11 Peggy Russell that you had been arrested for
12 drugs?

13 THE WITNESS: No.

14 THE COURT: Were you ever
15 arrested for drugs?

16 THE WITNESS: I have never been
17 arrested.

18 THE COURT: All right.

19 MR. SCELSE: I would like to
20 offer Defendant's Exhibit A, to the jury.

21 MR. PAVONE: I object.

22 THE COURT: Overruled.

23 MR. SCELSE: Those are the --

24 THE COURT: (Interrupting) I
25 have overruled the objection.

1 MR. SCELSE: May I read to the
2 jury what --

3 THE COURT: (Interrupting) You
4 can, at the appropriate time.

5 MR. SCELSE: Thank you.

6 THE CLERK: Defendant's Exhibit A,
7 in evidence.

8 THE COURT: May I see that
9 exhibit?

10 MR. SCELSE: Yes (offering).

11 THE COURT: All right.

12 (Defendant's Exhibit A for
13 identification, received in evidence.)

14 BY MR. SCELSE:

15 Q Just one or two more questions. Were any charges
16 dropped against you, for the testimony on this
17 case? Any arrest charges?

18 A I have never been arrested.

19 Q You had a -- how many children did you have?

20 A Two.

21 Q And you had one with you?

22 A Yes.

23 Q And where is the other child?

24 A I had her when I was young, and I gave her up for
25 adoption.

1 Q All right. You had no continuous problem with the
2 welfare --

3 MR. PAVONE: (Interrupting)

4 Objection.

5 THE COURT: Sustained. I wish
6 that you would make timely objections, Mr.
7 Pavone. I can't represent you here. Where
8 the other child is has nothing whatsoever
9 to do with this case. It is blatantly im-
10 material. Wake up.

11 MR. PAVONE: Yes, your Honor.

12 THE COURT: Go ahead.

13 Well, we will take our luncheon
14 recess.

15 (Whereupon, the jury was excused.)

16 THE COURT: Court stands in
17 recess for half an hour.

18 (Whereupon, at 12:30 p.m. an
19 adjournment was taken until 1:00 p.m.)
20
21
22
23
24
25

AFTERNOON SESSION

THE COURT: All right, proceed.

(Whereupon, the following
proceedings took place before the Court and
the jury.)

REDIRECT EXAMINATION

MR. PAVONE: May I see Defendant's
Exhibit A.

BY MR. PAVONE:

Q I have one question, Miss Shepherdson: In connection with this complaint filed by Peggy Russell, did the Social Services people take any action whatsoever against you?

A Not on that one.

MR. PAVONE: Thank you very much.

RE CROSS-EXAMINATION

BY MR. SCELSI:

Q You say not on that one. Were there a number of other complaints filed against you?

THE COURT: Sustained. This
is not proper recross. He only asked one
question. It is immaterial.

BY MR. SCELSI:

On this complaint, it was filed on 12/30/75, is

1 that correct?

2 A I didn't know about it until just now.

3 Q Well, is it true that the reason nothing was done
4 on this particular complaint was in exchange for
5 your testimony against the defendant here?

6 A No.

7 Q And is it true, and you know yourself that the FBI
8 got a hold of all of these records?

9 A I don't know that, no.

10 Q Mr. Worst is with the FBI, isn't that correct?

11 A Yes.

12 Q And his name appears on this. Do you recall that?

13 MR. SCELSI: I would like to
14 offer this in evidence.

15 THE COURT: His name appears
16 on it?

17 BY MR. SCELSI:

18 Q Did you ever get in trouble with the Social Services
19 because you left drugs around for your child?

20 A No.

21 Q Did you ever get in trouble with them for neglecting
22 your child?

23 THE COURT: Sustained. It is
24 not relevant. It is obviously an attempt to
25 be prejudicial. You are excused.

1 (Whereupon, the witness was
2 excused.)

3 THE COURT: If this were an
4 adversary proceeding you would never get away
5 with it.

6 MR. PAVONE: The Government calls
7 Mr. Richard Lee Fitch.

8
9 R I C H A R D L E E F I T C H,
10 called as a witness, having been first duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. PAVONE:

14 Q Mr. Fitch, are you appearing here today pursuant
15 to a subpoena?

16 A Yes.

17 Q Now, Mr. Fitch, I would like to direct your
18 attention, please to December 10th, 1975. Where
19 were you living at that time?

20 A At Camden Street, in Johnson City.

21 Q Johnson City, New York?

22 A Yes.

23 Q And were you living alone?

24 A I was living with Debbie Buchanan.

25 Q And were you working at that time, Mr. Fitch?

- 1 A Yes, I was.
- 2 Q And what hours did you normally work?
- 3 A Four to twelve thirty at night.
- 4 Q Pardon me?
- 5 A Four thirty in the afternoon until twelve thirty
- 6 at night.
- 7 Q Where is that?
- 8 A The General Electric plant at North Silver, New
- 9 York, or Westover, New York.
- 10 Q Now, on December 10th, 1975, were you home in the
- 11 morning and afternoon of that day?
- 12 A Yes, I was.
- 13 Q And did you receive any visitors?
- 14 A Yes, I did.
- 15 Q And who were they?
- 16 A Anthony Cavallaro, Dave Baer, and later it was
- 17 Jerry Brown.
- 18 Q And what time of the day was that, do you recall?
- 19 A I believe around one thirty; two o'clock.
- 20 Q Prior to that time, Miss Shepherdson did come
- 21 to the house, as well?
- 22 A Yes, she had.
- 23 Q Who was home on that day, besides yourself?
- 24 A Dave Baer was, and Mary was there, and then Jason,
- 25 her child, and it was Debbie and Jason --

1 Q (Interrupting) Would you please keep your voice
2 up. We want everybody in the room to hear you.

3 Now, did Mary say what the
4 purpose was for her visit to your apartment?

5 A She had to go to Social Services to see about
6 assistance.

7 Q So she went and left Jason there for somebody to
8 babysit him?

9 A Yes.

10 Q Now, at the time that Anthony Cavallaro and David
11 Baer and Brown came to visit you, was Mary at
12 the apartment at this time?

13 A Yes, she was.

14 Q And she was at the apartment?

15 A Yes.

16 Q And did she subsequently leave while they were
17 there?

18 A Yes.

19 Q And what did these gentlemen want?

20 A They wanted to see Richard Sampson to find out
21 the whereabouts of Jerry.

22 Q I am sorry, I didn't hear you.

23 A They wanted to see Richard Sampson to find out
24 the whereabouts of a man by the name of Jerry.

25 Q And did they say Jerry who?

- 1 A No.
- 2 Q And did they say why they wanted to see Mr.
- 3 Sampson?
- 4 A Because they said that this Jerry had ripped them
- 5 off.
- 6 Q Now, why did they want to talk to Sampson?
- 7 A Becsuse they wanted -- because -- because they
- 8 figured Sampson knew where Jerry was.
- 9 Q That is what they said to you?
- 10 A Yes.
- 11 Q And did they display any weapons that afternoon?
- 12 A No.
- 13 Q Then, what happened, Mr. Fitch? Did they go up
- 14 to Sampson's apartment?
- 15 A Yes, they did.
- 16 Q And did you go with them?
- 17 A Yes.
- 18 Q And what happened at Sampson's apartment?
- 19 A They looked through the apartment, and they found
- 20 nothing implicating Mr. Sampson with Jerry.
- 21 Q And who went into the apartment?
- 22 A I went in, and a man later identified to me as
- 23 Jerry Brown.
- 24 Q And can you recognize the man later identified
- 25 to you as Jerry Brown in the courtroom here today?

1 A Yes, he is sitting over there behind the table.

2 THE COURT: Let the record
3 indicate that he has identified Brown.

4 BY MR. PAVONE:

5 Q How did you get into Sampson's apartment?

6 A I used a knife to open the door.

7 Q You opened the door?

8 A Yes.

9 Q And was Sampson home? I take it he wasn't home?

10 A No, he wasn't.

11 Q And did they request that you open the door to
12 Sampson's apartment?

13 A Yes.

14 Q And why did you do that?

15 A Because I was a little bit afraid of them.

16 Q Afraid of whom?

17 A Afraid of Jerry Brown, and Anthony Cavallaro.

18 MR. SCELSI: I will object.

19 THE COURT: Overruled.

20 BY MR. PAVONE:

21 Q About what time was it that you entered Mr.
22 Sampson's apartment?

23 A I believe it was around 2:30.

24 MR. SCELSI: 2:30?

25 THE COURT: Yes, 2:30.

1 BY MR. PAVONE:

2 Q And what happened when you left the apartment?

3 A We went back down to my apartment.

4 Q And did there come a time when Mr. Cavallaro and
5 Mr. Brown left the apartment, in the afternoon?

6 A Yes.

7 Q And do you recall what time that was?

8 A Around 3 or 3:30.

9 Q And was Mary Shepherdson there at that time?

10 A No, she was not.

11 Q Now, did Mary Shepherdson subsequently come back
12 to the apartment?

13 A Yes, she did.

14 Q And did you take her anywhere that evening?

15 A Yes, I took her down to where she lived, and she
16 went down there to get money, so she could get
17 fuel for her trailer.

18 Q And where was that?

19 A She worked at the Doll House.

20 Q Then what did you do? Did you return Mrs.
21 Shepherdson to your apartment?

22 A Yes, I did.

23 Q And where did you do?

24 A I went to work.

25 Q And this day was a weekday, I take it?

1 Q Now, Mr. Fitch, did you return to the apartment
2 at 5 Camden Street, after you got through from
3 work?

4 A Yes, I did.

5 Q And what time was that?

6 A It would have been around 12:45.

7 Q The next morning?

8 A Yes.

9 Q And that was December 11th, is that correct?

10 A Right.

11 Q Was anybody home when you returned to the
12 apartment?

13 A Debbie was there, and the two children.

14 Q Debbie and who?

15 A The two children.

16 Q All right. And did you go to sleep immediately
17 when you got home?

18 A No, I did not.

19 Q What did you do?

20 A I sat up and read the paper.

21 Q And what happened next? Did you receive any
22 visitors that evening?

23 A Yes.

24 MR. FINER: Objection. We have
25 got to put the time together.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: It would help.

MR. PAVONE: He says 12:45 he

returned from work.

BY MR. PAVONE:

Q You sat there reading, is that correct, Mr. Fitch?

A Yes.

Q And then did you subsequently receive some visitors that evening?

A Yes, sir, around 2:30 Anthony Cavallaro came with Mary Shepherdson.

THE COURT: Is that 2:30 a.m.?

THE WITNESS: Yes.

BY MR. PAVONE:

Q And you say that Anthony and Shepherdson came to the apartment?

A Yes.

Q And did he say anything when he came in?

A No, he did not.

Q Was he displaying a weapon at that time?

A Yes, he was.

Q And what kind of a weapon --

MR. SCELSE: (Interrupting) I

will object.

THE COURT: You are leading all over the place. Let him tell us what he saw,

1 and what was said.

2 MR. PAVONE: Yes, sir.

3 BY MR. PAVONE:

4 Q Did Mr. Cavallaro say anything when he came in?

5 A No, he did not.

6 Q Did you observe anything when Mr. Cavallaro came
7 into the house, out of the ordinary?

8 A He was carrying a weapon in his left hand.

9 Q And what kind of a weapon was that?

10 A It was an automatic pistol of some sort.

11 Q And did Mary Shepherdson say anything when she
12 returned?

13 A Yes.

14 Q What did she say?

15 MR. SCELSE: I will object.

16 THE COURT: Who was present?

17 BY MR. PAVONE:

18 Q Who was present, Mr. Fitch, when Mr. Cavallaro came
19 in at 2:30 in the morning?

20 MR. SCELSE: He is leading again.

21 THE COURT: That is not leading.

22 MR. SCELSE: All right, I will

23 withdraw it.

24 BY MR. SCELSE:

25 Q Okay, Mr. Fitch, go ahead.

1 A Anthony Cavallaro and Mary Shepherdson came back to
2 my apartment. Debbie was in bed asleep, and the
3 two children were there.

4 THE COURT: Who was in the room
5 when Cavallaro came in?

6 THE WITNESS: Just me.

7 THE COURT: Just you. Was Mary
8 Shepherdson there?

9 THE WITNESS: Yes, she came in.

10 THE COURT: In with Anthony?

11 THE WITNESS: Yes.

12 THE COURT: And was Brown there?

13 THE WITNESS: No, he was not, sir.

14 THE COURT: Go ahead. Now, what
15 did Mr. Shepherdson say, and I will receive it
16 only as against the one who was present,
17 Cavallaro, and not Brown.

18 BY MR. PAVONE:

19 Q What did Mary Shepherdson say?

20 A After Anthony Cavallaro had left the apartment --

21 MR. SCELSI: After?

22 THE COURT: After he had left?

23 Sustained.

24 BY MR. PAVONE:

25 Q Did she speak at the time that Cavallaro was

1 A No, she did not.

2 THE COURT: Next question.

3 BY MR. PAVONE:

4 Q Did she say something as soon as he left?

5 THE COURT: No, sustained.

6 MR. PAVONE: Sir, I think --

7 THE COURT: (Interrupting)

8 Sustained. Next question.

9 BY MR. PAVONE:

10 Q Did you observe anything about the appearance of
11 Mary Shepherdson?

12 A She appeared to be very terrified.

13 MR. SCELSI: Wait a minute.

14 THE COURT: Strike that out.

15 Sustained. Strike it out. That is a conclusion.

16 What did he observe about her?

17 BY MR. PAVONE:

18 Q What did you observe about Miss Shepherdson?

19 A She was shaking, and very -- she looked like she
20 wanted to cry.

21 MR. SCELSI: I object to this as
22 a conclusion.

23 THE COURT: All right.

24 BY MR. PAVONE:

25 Q What happened next, Mr. Fitch?

1 A Later that morning I got a phone call from Olson
2 who was saying that Richard Sampson had been shot.

3 MR. SCELSI: I will object as
4 hearsay.

5 THE COURT: Sustained, and
6 strike it out.

7 BY MR. PAVONE:

8 Q Prior to that time, Mr. Fitch, was there any other
9 noise in the house, and did you hear anything after
10 Mary Shepherdson had returned?

11 MR. SCELSI: That is leading.

12 THE COURT: Sustained.

13 BY MR. PAVONE:

14 Q Mr. Fitch, let me ask you this: Did anything
15 else unusual happen that night?

16 THE COURT: Sustained.

17 BY MR. PAVONE:

18 Q Mr. Fitch, when Mr. Cavallaro and Mr. Brown visited
19 you in the afternoon, you went up to Sampson's
20 apartment, and did you call the police to advise
21 them that you had entered Sampson's apartment?

22 A No, I did not.

23 Q Why didn't you do that?

24 MR. SCELSI: Objection.

25 THE COURT: Sustained.

1 BY MR. PAVONE:

2 Q Did you call the police when Anthony Cavallaro
3 came into your home displaying a gun, at 2:30 in
4 the morning?

5 A No, I did not.

6 Q Why didn't you call the police?

7 THE COURT: Sustained.

8 MR. PAVONE: If the Court would
9 bear with me for 30 seconds, I would like to
10 check my notes.

11 I have no further questions.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. SCELSE:

15 Q You don't even know if the gun was loaded, Mr.
16 Fitch? You don't know whether this alleged gun
17 was loaded, do you?

18 A No, I do not.

19 Q What time did you go to work that night?

20 A 4:30.

21 Q 4:30?

22 A Yes.

23 Q Did you walk to work or drive to work?

24 A I walked.

25 Q And at 3 o'clock Mary Shepherdson had left for

1 Q And it is correct, isn't it, that in front of your
2 apartment where you were living, there was a street
3 light?

4 A Yes.

5 Q And it was working to your knowledge, isn't that
6 correct?

7 A Yes.

8 Q And was it slippery out that night?

9 A No.

10 Q Did you look at the note that was found in the
11 apartment?

12 A Yes.

13 Q And can you recall what it said?

14 A Not the exact words.

15 THE COURT: But the best that
16 you can remember, what did it say?

17 THE WITNESS: It said, "Jerry
18 would fix Sampson."

19 BY MR. SCELSI:

20 Q And did it say anything about how Jerry Brooks
21 got into the apartment?

22 A No.

23 Q Do you recall that it said that Mary let him in?

24 A No.

25 Q You don't recall that?

1 A No, I did not.

2 Q You didn't. Well, Debbie was asleep when you got
3 home though, wasn't she?

4 A Yes.

5 Q And when you got home you went to sleep, but you
6 were awakened by a phone call from Baer, isn't that
7 right?

8 A Yes.

9 Q And after Mary Shepherdson came in, you all went
10 back to sleep again, isn't that correct?

11 A No.

12 Q What happened to Mary?

13 A After about half an hour, she laid down on the
14 couch in the front room and went to sleep.

15 Q You gave her a beer or something?

16 A No.

17 Q Are you sure of that?

18 A Yes.

19 Q And it is true that Mary just previous to this
20 had been living with Sampson, isn't that correct?

21 A Yes.

22 Q And I believe that you made a statement to the
23 Broome County Sheriff's Department on December 11th
24 that Sampson and Jerry Brooks were rip-off artists,
25 isn't that correct?

1 A Yes.

2 Q And Mary had been living with Sampson for a month
3 or more, isn't that correct?

4 A Yes.

5 Q And Sampson had been up to Mary's apartment on a
6 number of occasions, isn't that correct?

7 A Yes.

8 Q And Mr. Brooks had been over to Mary's trailer on a
9 number of occasions, isn't that correct?

10 MR. PAVONE: Objection. This
11 witness is incompetent to answer that.

12 THE COURT: If he knows.

13 BY MR. SCELSI:

14 Q Is that correct?

15 A I do not know.

16 Q Well, it would be fair to say that, isn't it correct
17 in your own knowledge, that Mary Shepherdson was
18 pretty well acquainted with Jerry Brooks, isn't
19 that correct?

20 A I wouldn't know if she was well acquainted with
21 him or not.

22 Q But you have seen them on a number of occasions in
23 the apartment above you, isn't that right?

24 A Yes.

25 Q And you saw them come in and out, Jerry Brooks and

1 THE COURT: Overruled.

2 THE WITNESS: I saw her smoke
3 marijuana on occasions.

4 BY MR. SCELSE:

5 Q Any other drugs?

6 A No.

7 Q So there is no question then -- just one or two
8 moments. Mary Shepherdson was at the apartment
9 before three o'clock, when Mr. Cavallaro was
10 there, and Mr. Brown, isn't that correct?

11 A Yes.

12 Q And they had conversations, whether or not you
13 know what it was, but there was conversations
14 between them, right?

15 A Yes.

16 Q And there was a general discussion of Sampson
17 and Brooks and so forth?

18 A Yes.

19 Q And Mary was involved, wasn't she?

20 MR. PAVONE: Objection, your Honor.

21 THE COURT: Sustained.

22 BY MR. SCELSE:

23 Q Do you know whether Mary Brooks was involved in
24 the conversation about where the location of
25 Jerry Brooks was?

1 A Yes.

2 Q And you weren't with Mr. Cavallaro the entire
3 afternoon either, were you, isn't that correct?

4 A No, I wasn't.

5 MR. PAVONE: Thank you. I have
6 no further questions.

7 THE COURT: You are excused.
8 (Whereupon, the witness was
9 excused.)

10 MR. PAVONE: The Government
11 calls Debbie Buchanan.

12
13 D E B O R A H B U C H A N A N,
14 called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PAVONE:

18 Q Miss Buchanan, are you married?

19 A No, divorced.

20 Q Are you divorced from Mr. Fitch?

21 A Yes.

22 MR. PAVONE: I stand corrected.
23 I was not aware of that fact. I thought that
24 they were still married.

25

1 Q In the afternoon?

2 A Yes.

3 Q And did Mr. Cavallaro and Mr. Brown -- are
4 they in the courtroom today?

5 A Yes.

6 Q And would you indicate where they are?

7 A Anthony is over there (indicating).

8 THE COURT: Tell us what he is
9 wearing.

10 THE WITNESS: A tan suit.

11 THE COURT: And what is the color
12 of the jacket?

13 THE WITNESS: Yellow.

14 THE COURT: Let the record
15 indicate that the witness has identified
16 Cavallaro.

17 Now, do you see Brown?

18 THE WITNESS: Yes.

19 THE COURT: Where is he, and what
20 is he wearing?

21 THE WITNESS: A blue jacket.

22 He is at the end of the bench.

23 THE COURT: The table there?

24 THE WITNESS: Yes.

25 THE COURT: All right, let the

1 record indicate that she has identified Brown.

2 BY MR. PAVONE:

3 Q Now, referring to the afternoon that these gentlemen
4 came to your house to visit.

5 A Yes.

6 Q And did they say what they wanted?

7 A They were looking for Sampson.

8 Q Who was looking, do you know? Cavallaro and Brown?

9 A Yes.

10 Q And did they say anything else? Did they say why
11 they were looking for Sampson?

12 A For a rip-off.

13 THE COURT: I can't hear you.

14 BY MR. PAVONE:

15 Q Please speak up to the Judge and the jury so they
16 can hear you.

17 A For a drug rip-off.

18 Q Now, about what time do you recall that was, in
19 the afternoon? Do you recall?

20 A No.

21 Q Was Mr. Cavallaro and Mr. Brown in your apartment
22 the entire afternoon?

23 A No, they left.

24 Q What time was that?

25 A Two o'clock.

1 Q Well, when they were in your apartment, did either
2 of them use your telephone?

3 A Yes, they did.

4 Q And who was that?

5 A Tony.

6 Q Mr. Cavallaro?

7 A Yes.

8 Q And do you recall what Mr. Cavallaro said on the
9 telephone?

10 A He asked his wife to get his piece out of the
11 dresser, and -- his gun.

12 Q And he made a telephone call?

13 A Yes.

14 Q And he demanded a gun be delivered to your apartment?

15 A Yes.

16 MR. SCELSI: Objection, your Honor.

17 THE COURT: He was just summariz-
18 ing what was said.

19 MR. PAVONE: She seems timid and
20 it seems difficult.

21 THE COURT: That is what you are
22 supposed to teach them not to be, during your
23 interviews with them before a trial.

24 MR. PAVONE: Yes, your Honor.

25

1 BY MR. PAVONE:

2 Q Please speak up so we can all hear. We are very
3 interested in what you know, okay, and what you
4 have observed.

5 A Yes.

6 Q Now, did Mr. Cavallaro receive a visitor in your
7 apartment that afternoon?

8 A He picked up the gun from his wife.

9 Q You observed this from your apartment?

10 A Yes.

11 Q And did he bring this weapon into your apartment?

12 A Yes.

13 Q And then what happened next?

14 A He asked my husband to break and enter Mr. Sampson's
15 apartment.

16 Q Anthony asked him this?

17 A Yes.

18 Q Okay. And about what time did you say you asked
19 these gentlemen to leave?

20 A Two or three in the afternoon.

21 Q Two or three in the afternoon, you say?

22 A Yes.

23 Q And was Mary Shepherdson in your apartment the
24 entire afternoon?

25 A She had gone to the Welfare office.

1 A No.

2 Q All right. Then what happened that night? Was
3 Mary Shepherdson in your apartment that night?

4 A No. David called me and said that he and Anthony
5 were coming over to get her.

6 Q And is that what you told Mary Shepherdson?

7 A Yes.

8 MR. FINER: I object.

9 THE WITNESS: And Mary asked me
10 if she could hide.

11 MR. SCELSE: I object.

12 THE COURT: Yes, strike that out.

13 BY MR. PAVONE:

14 Q Now, Miss Buchanan, when Miss Shepherdson was there
15 in your apartment that night, did you say anything
16 to her?

17 A About the phone?

18 Q Yes, tell me what you said to Miss Shepherdson.

19 A Tony --

20 MR. SCELSE: (Interrupting) Well,
21 that is hearsay.

22 THE COURT: Sustained. Ask her
23 who was present.

24 BY MR. PAVONE:

25 Q Who was present that night when --

1 THE COURT: (Interrupting) Were
2 any of the defendants present?

3 MR. PAVONE: No.

4 THE COURT: Then it is not ad-
5 missible. Next question.

6 MR. PAVONE: Can I be heard on
7 this?

8 THE COURT: No.

9 BY MR. PAVONE:

10 Q Tell me, Miss Buchanan, was Mary Shepherdson in
11 your apartment that evening?

12 A Yes, she was.

13 Q The evening of December 10th. Did anybody come to
14 call on her that evening?

15 A Yes, David called her.

16 Q No, did anybody come, physically, to your apartment?

17 A Yes, Jerry Brown.

18 Q Do you recall who was there?

19 A Jerry Brown.

20 Q And is that the man that you identified earlier
21 as being in the apartment earlier that afternoon?

22 A Yes.

23 Q And was he displaying any weapons at that time?

24 A Yes, he was.

25 Q What kind --

1 MR. SCELSE: I will object.

2 THE COURT: I guess he doesn't
3 know how to ask a question without leading.
4 What did you see?

5 THE WITNESS: I seen a gun in
6 Jerry's hands; under his belt.

7 BY MR. PAVONE:

8 Q Now, when Jerry Brown was in the apartment, did
9 he say anything?

10 A Yes, he told her to get her coat and somebody
11 wanted to talk to her in the car, and he took her
12 arm.

13 Q And did they leave the apartment?

14 A Yes.

15 Q And did you observe them depart?

16 A Yes.

17 Q And what did you see?

18 A I seen them get into a big car and they pushed
19 Mary into it.

20 Q Did you recognize the car?

21 A Just a big dark colored car.

22 Q After you saw Mary get pushed into the car, did
23 you call the police?

24 A No.

25 Q Why not?

1 A I called Sampson.

2 Q Pardon?

3 A I called Sampson and --

4 MR. SCELSI: (Interrupting) Wait
5 a minute. I can't hear the answer.

6 THE COURT: Sustained.

7 MR. PAVONE: I have no further
8 questions of this witness.

9 CROSS-EXAMINATION

10 BY MR. SCELSI:

11 Q The big car was right out in front of the apartment,
12 right?

13 A Yes.

14 Q And in broad daylight -- there was a street light,
15 am I right, in front of your apartment?

16 A Yes.

17 Q And across the street there was a parking lot for
18 McDonald's, isn't that right?

19 A Yes.

20 Q And the place was all lighted up, isn't that right?

21 A Right.

22 Q And when Mr. Brown got there, actually you knew
23 someone was coming to talk to Mary, isn't that
24 correct?

25 A Yes, it is.

1 A Yes.

2 Q Approximately, I think, a week ago; July 5th?

3 A Yes.

4 Q Now, we had a discussion about Mary Shepherdson,
5 isn't that true?

6 A Yes.

7 Q And what did you tell me then about Mary Shepherdson,
8 what you knew about her?

9 A I don't remember.

10 Q Did you tell me she had been involved in drug
11 rip-offs?

12 MR. PAVONE: Objection, your Honor.
13 This witness is incompetent to testify
14 concerning that.

15 THE COURT: Just what she told
16 counsel.

17 BY MR. SCELSI:

18 Q You have known Mary Shepherdson for quite awhile,
19 isn't that correct?

20 THE COURT: I don't know what
21 difference it would make if she were involved
22 in drug rip-offs. It is not material.

23 MR. SCELSI: I think that it is
24 material that the veracity of Mary Shepherdson's
25 testimony -- well, that is what I am trying to

1 get at.

2 THE COURT: All right, go ahead.

3 BY MR. SCELSI:

4 Q Did you tell me you thought she was involved in
5 this particular deal?

6 MR. PAVONE: Objection.

7 THE COURT: Overruled.

8 BY MR. SCELSI:

9 Q What is your answer?

10 A No.

11 Q Do you remember the conversation that we had out-
12 side of your apartment?

13 A No, I don't.

14 Q Pardon?

15 A No,

16 Q You don't even remember the examination?

17 A No.

18 Q You mean that you talked to me a week ago and you
19 can't remember that you talked to me is that right?

20 A Yes, I remember talking to you.

21 Q Do you remember talking to the Grand Jury, and it
22 has no date, but I imagine it is back in probably
23 February or March of this year?

24 A Yes, I do.

25 Q And do you remember being asked -- well, let's go

1 back a little. Do you remember giving a statement
2 on December 11th to Captain Milks of the Broome
3 County Sheriff's Department?

4 A Yes.

5 Q And do you remember telling him about the December
6 5th meeting, 1975?

7 A Yes.

8 Q Did you tell the jury what you told him with
9 respect to this meeting involving Mary Shepherdson,
10 Jerry, and Dave --

11 MR. PAVONE: I object.

12 THE COURT: Sustained. I don't
13 know what this is.

14 MR. SCELSI: May I approach the
15 bench?

16 THE COURT: No, make me an offer
17 of proof.

18 (Whereupon, the following took
19 place at the bench, out of the hearing of the
20 jury.)

21 THE COURT: I am convinced that
22 you have absolutely no sense of materiality.
23 Just a minute.

24 MR. SCELSI: There is a statement
25 there about the meeting. Mary Shepherdson

1 BY MR. SCELSE:

2 Q Did you see the note that was upstairs, or read
3 the contents that was found in Mr. Sampson's
4 apartment?

5 A Yes.

6 Q And can you tell me what the contents of this --

7 THE COURT: (Interrupting) Who
8 was the note addressed to?

9 BY MR. SCELSE:

10 Q Who was that note addressed to?

11 A Sampson.

12 Q And who was it signed by?

13 A Jerry Brown.

14 Q Who?

15 A No, Jerry Brooks.

16 Q And what did the note say?

17 A It says that Sampson would get paid after they got
18 done dealing with a bunch of freaks.

19 Q Well, I can't hear you. Would you read what you
20 told the --

21 MR. SCELSE: This is your state-
22 ment?

23 MR. PAVONE: That is not my
24 statement.

25 MR. SCELSE: Let me lay a

1 foundation.

2 BY MR. SCELSI:

3 Q You gave a statement on December 11th of 1975 to
4 Mr. Milks, Captain in the Broome County Sheriff's
5 Department?

6 A Yes.

7 Q Now, all of this was the day of the incident,
8 right?

9 A Yes.

10 Q And all I am asking you is if you would please
11 read the statement as to what that note said, and
12 I am referring to the note from Jerry Brooks to
13 Mr. Sampson, and right here (indicating and
14 offering), and it is right there.

15 A Oh.

16 "My luggage is here, I have a
17 rip-off deal to do in Binghamton with some freak.
18 Don't worry, you'll get your money out of it. Mary
19 let us in the apartment. The money is in the owl."

20 Q "Mary let us in the apartment," is that right?
21 And that is Mary Shepherdson, isn't that correct?

22 MR. PAVONE: Objection, your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Yes.

25

1 BY MR. SCELSI:

2 Q So Mary was involved in the rip-off --

3 MR. PAVONE: (Interrupting)

4 Objection, your Honor.

5 THE COURT: Overruled.

6 BY MR. SCELSI:

7 Q Wasn't she?

8 A I don't know.

9 Q Well, do you remember talking to the Grand Jury,
10 again?

11 A Yes, I do.

12 Q And do you remember talking about Mary getting home
13 about six o'clock in the afternoon?

14 A Yes.

15 Q And what did she tell you about her telephone call
16 to Jerry Brooks?

17 Would you like me to refresh your
18 recollection? You are talking about Cavallaro and
19 Brown and Baer had left, and the question posed to
20 you was what had happened next, and your answer was,
21 "Mary came home at six and said she called Jerry
22 Brooks and warned them not to come down because
23 there were people waiting for him."

24 A Yes.

25 Q This is what Mary told you, isn't that right?

1 A Yes.

2 And she knew where Jerry Brooks was all of the time,
3 didn't she?

4 MR. PAVONE: Objection.

5 THE WITNESS: Yes.

6 THE COURT: Sustained.

7 BY MR. SCELSE:

8 Q Now, with reference to the telephone call that --
9 let me rephrase that. You were asked by Mr. Pavone
10 if you had visitors that afternoon, isn't that
11 correct?

12 A Yes.

13 Q And that is what they were. That is what Mr.
14 Cavallaro was, was a visitor, isn't that right,
15 and the rest of them?

16 A Well --

17 THE COURT: (Interrupting) I
18 suppose someone who comes to someone's home
19 is a visitor. How do you think that the jury
20 can draw any conclusion?

21 BY MR. SCELSE:

22 Q And that night when you received a phone call you
23 were aware that they were coming back to see you
24 again, isn't that correct?

25 A Yes.

1 Q And you made that known to Mary, right?

2 A Yes.

3 Q And nobody called the police, did they?

4 A No.

5 Q Just answer yes or no. And as a matter of fact,
6 after Mary Left there with Mr. Brown, you went to
7 bed, didn't you? Just answer yes or no.

8 A No.

9 Q Did you go to bed shortly thereafter?

10 A No.

11 Q Well, weren't you asleep when Mary got home?

12 A Yes.

13 Q And when Mr. Brown came in and talked to you and
14 Mary, Mary was in the kitchen, isn't that correct?

15 A I don't --

16 Q (Interrupting) When Mr. Brown came in to talk to
17 you and Mary, Mary was in the kitchen, isn't that
18 correct?

19 A Yes.

20 Q And there was conversation about the children,
21 isn't that right? There were two small children
22 there, isn't that correct?

23 A Yes.

24 Q And didn't Mr. Brown comment and ask what the
25 name of the children were?

1 A No.

2 Q He didn't? Wasn't there any conversation to the
3 fact that he also had a son, Jason, the same name
4 as Mary's son?

5 A No.

6 Q You don't prefer to remember that, correct. Dave
7 Buchanan is your cousin, isn't he?

8 A Yes.

9 MR. PAVONE: Objection. The
10 name was not mentioned.

11 MR. SCELSI: David Baer -- well,
12 David Buchanan, and I think it has been in the
13 case --

14 THE COURT: (Interrupting) Put
15 your questions, please.

16 BY MR. SCELSI:

17 Q Do you know if Dave Baer was in the car that night?

18 A Yes, he was.

19 Q And he is your cousin?

20 A Yes.

21 MR. SCELSI: Your Honor, I have
22 just a couple of more questions.

23 BY MR. SCELSI:

24 Q When we were talking about Mary Shepherdson a week
25 ago, and she didn't know -- is it true or isn't it

1 Jury transcript.

2 THE COURT: You can read it
3 correct later on when it is your time.

4 BY MR. FINER:

5 Q Do you recall the question, "Was Mary in the
6 apartment when you received the call, or did she
7 come in a few minutes later?"

8 A A few minutes later.

9 Q And you are saying now that she was there a few
10 minutes later. You don't recall whether, at that
11 time, you said she was there?

12 THE COURT: What was that?

13 BY MR. SCELST:

14 Q She was there?

15 A She wasn't when Dave called me.

16 THE COURT: Read the last question
17 and the answer.

18 BY MR. FINER:

19 Q The question was, was Mary in the apartment when
20 she received the call or did she come in a few
21 minutes later, and the answers was that she was
22 there. Is that the statement that you made to
23 the Grand Jury?

24 A If it says that.

25 Q But that is not what you are telling me now, is

1 that the fact, or is that not the fact or is that
2 correct?

3 A When Dave called me?

4 Q That is correct.

5 A To tell me that he was beaten up?

6 Q When you received the call which you just testified
7 to it was around five o'clock from Mr. Baer, and
8 was Mary present is the question, and you answered,
9 "She wasn't there." Now, I am asking you if she
10 was there? Which is the true story?

11 A She wasn't there. A few minutes later she walked in.
12 She was outside of the apartment.

13 Q Your memory is better now --

14 THE COURT: (Interrupting) That
15 is argumentative.

16 BY MR. FINER:

17 Q After Mary left with Mr. Brown, what did you do?

18 A Called Sampson.

19 Q You called Mr. Sampson?

20 A Yes.

21 Q Was he a police officer?

22 A No.

23 Q What does he do?

24 A He was the man that was shot.

25 Q Does that have something to do with his occupation?

1 A No.

2 Q What is his occupation, do you know?

3 A A carpenter.

4 Q A carpenter. But you called him after Mary left?

5 A Yes.

6 Q And you didn't call any police authorities?

7 A No. Mary was going with Sampson, and that is why
8 I called him.

9 Q Did you used to go with Mr. Sampson?

10 A Yes.

11 Q And did you live with him upstairs?

12 A Four years ago.

13 Q Do you recall when you went to sleep that night of
14 the 10th -- you went to sleep that night, didn't you?

15 A Yes.

16 Q And do you recall when?

17 A About midnight.

18 Q And between midnight and the time that you called
19 Mr. Sampson, did you make any other phone calls?

20 A No.

21 Q And when did you wake up, again?

22 A The next morning.

23 Q The next morning. Are you a good friend of Mary's?

24 A Yes.

25 MR. FINER: That is all I have,

1 R I C H A R D S A M P S O N ,
2 called as a witness, having been first duly
3 sworn, was examined and testified as follows:

4 D I R E C T E X A M I N A T I O N

5 BY MR. PAVONE:

6 Q Mr. Sampson, you are appearing here today pursuant
7 to a subpoena?

8 A I can't hear you.

9 THE COURT: What difference does
10 it make?

11 BY MR. PAVONE:

12 Q Let me direct your attention to December 10th,
13 1975. Where were you residing at that time?

14 A 5 Camden Street.

15 Q And is that the upstairs apartment?

16 A Yes, sir.

17 Q Now, directing your attention to the evening of
18 December 10th, and the morning of December 11th,
19 1975, were you home at that time?

20 A Off and on.

21 Q What time did you return home to stay?

22 A Sometime around midnight.

23 Q And were you alone at that time, around midnight?

24 A Yes.

25 Q And did there come a time in the evening when you

1 received a visitor?

2 A Yes.

3 Q And can you tell us who, please, arrived at your
4 home that evening?

5 MR. FINER: Objection, unless
6 we have the full time and place.

7 THE COURT: Ask him what happened,
8 if anything, and the actual time.

9 BY MR. PAVONE:

10 Q Would you please tell us what happened, if anything,
11 as you returned after midnight on that night.

12 MR. SCELSI: I will object.

13 THE COURT: Overruled.

14 BY MR. PAVONE:

15 Q Go ahead and proceed.

16 A Okay. I was visited by a Jerry Brooks, and
17 Anthony Cavallaro -- I am sorry, Jerry Brown.

18 THE COURT: What time?

19 THE WITNESS: About 1:30 or 2
20 o'clock in the morning, somewhere around there.

21 THE COURT: Who was with you?

22 THE WITNESS: No one was with me.

23 THE COURT: Just the three of you?

24 THE WITNESS: Right.

25 THE COURT: Go ahead.

1 MR. SCELSE: May I have an offer
2 of proof?

3 THE COURT: It was overruled, and
4 go ahead.

5 BY MR. PAVONE:

6 Q Now, Mr. Sampson, had you met Mr. Brown before
7 that evening?

8 A No.

9 Q How about Mr. Cavallaro?

10 A Yes.

11 Q And can you -- are the two of them presently in
12 the courtroom?

13 A I see Tony.

14 Q Do you see Mr. Brown?

15 THE COURT: Stand up and take a
16 good look.

17 THE WITNESS: Yes, there he is
18 but he is a lot thinner, but that is him.

19 THE COURT: Which one?

20 THE WITNESS: The fellow with
21 the dark suit on, and the dark tie and the
22 white shirt.

23 THE COURT: And where is he
24 sitting at the table?

25 THE WITNESS: The last person

1 at the table.

2 THE COURT: Let the record re-
3 flect that he has identified Brown and
4 Cavallaro.

5 MR. PAVONE: Thank you, Your
6 Honor.

7 BY MR. PAVONE:

8 Q Now, tell us, Mr. Sampson, when these gentlemen
9 visited you did you see anything -- what did you
10 see, is the question.

11 A How do you mean, what did I see?

12 Q Yes.

13 A Well, Mr. Brown had a gun on me. I saw a gun.

14 Q And he was pointing this gun at you?

15 A Yes.

16 Q And then what did they say?

17 A Well, it was --

18 MR. SCELSI: I would object
19 again. This has got nothing to do with
20 Mary Shepherdson.

21 THE COURT: Overruled. Go ahead.
22 What did they say? What did you say, and not
23 they. I don't imagine that she sang a chorus.

24 BY MR. PAVONE:

25 Q What, if anything, did Cavallaro say?

1 A Tony came in the house and said we would have a
2 talk. This was after Mr. Brown had me in the
3 house, and said we would have a talk, and then we
4 left.

5 Q And did Mr. Brown say anything in the house?

6 A Just that he was there for Tony, and that he was
7 there to keep me there until Tony got there, or
8 whatever, something to that effect.

9 Q And did Tony say what he wanted to talk to you
10 about?

11 A There was a rip-off. There was a dope rip-off.

12 Q Is that what Tony said?

13 A No, that is what I knew.

14 Q What did Tony say that night, Tony Cavallaro?

15 A I talked to Tony earlier on the phone and I asked
16 him to come over and explain the story, and
17 explain what had happened so that, you know --

18 Q (Interrupting) Anyway, what happened next?

19 A Then, we went to Tony's house.

20 Q And you left your apartment?

21 A Right, right, and we went to Tony's house.

22 MR. SCELSI: I will object to
23 any further testimony after leaving the house.

24 THE COURT: Overruled.

25

1 BY MR. PAVONE:

2 Q What happened at Tony Cavallaro's house?

3 A I got shot.

4 Q By whom?

5 MR. SCELSI: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: By Mr. Brown.

8 BY MR. PAVONE:

9 Q Now, did Tony Cavallaro, did he do anything?

10 A He hit me once, that is all.

11 Q He hit you?

12 A Right.

13 Q And what happened after you got shot?

14 A Tony got me to the hospital. Tony made this other
15 fellow that I couldn't identify, made the other
16 fellow that I couldn't identify take me to the
17 hospital.

18 Q And what happened at the hospital? Were the
19 police summoned?

20 A Yes.

21 MR. PAVONE: I have no questions.

22 THE COURT: After you got shot,
23 did you see Mary Shepherdson at any time?

24 THE WITNESS: No.

25 THE COURT: Strike the testimony.

1 I am sorry, strike it.

2 I assumed that counsel was going
3 to correct it. Strike it.

4 MR. PAVONE: May I ask a couple
5 of more questions.

6 BY MR. PAVONE:

7 Q Just prior to Mr. Brown visitin' you the night of
8 December 11th, did you observe anything?

9 A Just, the only thing I saw was Tony and Mary and
10 Brown go up in front of the house, and Tony and
11 Mary walking to the downstairs apartment.

12 Q Downstairs?

13 A Yes, the downstairs apartment.

14 Q And what time was that?

15 A One thirty or maybe two o'clock; between there.

16 MR. PAVONE: Your Honor, I submit
17 that is the testimony.

18 THE COURT: Unless you can
19 represent to me that you are going to connect,
20 we are going to strike it.

21 MR. PAVONE: The evidence?

22 THE COURT: You haven't connected
23 it so far, and I don't want to argue. Can
24 you connect it later?

25 MR. PAVONE: No.

1 THE COURT: Strike it out. You
2 are excused.

3 MR. SCELSI: Your Honor, may I --

4 THE COURT: (Interrupting) I
5 have stricken the testimony unless you want
6 to call him as your own witness.

7 MR. SCELSI: I do.

8 THE COURT: All right.

9 (The witness, having been prev-
10 iously sworn, was called by Mr. Scelsi and
11 testified as follows.)

12 DIRECT EXAMINATION

13 BY MR. SCELSI:

14 Q I would like to ask you about Mary Shepherdson --

15 THE COURT: (Interrupting) I
16 might say to the jury that when we say to
17 strike it, you are to disregard it.

18 BY MR. SCELSI:

19 Q During the month of December, and prior thereto,
20 were you living with Mary Shepherdson upstairs?

21 A Yes, for several years.

22 Q And did there come a time that you went to
23 Cleveland?

24 A Right.

25 Q And was that about December 7th, 1975?

1 A I would have come back that day. I left on a Friday.

2 I left that December 7th and that was a Sunday.

3 Q All right. And while you were gone did Mary

4 Shepherdson, what did she do?

5 A She moved out and moved into a trailer.

6 Q And did you go to see her on the night of

7 December 7th?

8 A Right.

9 Q At the trailer?

10 A Yes.

11 Q And that is December 10th, 1975?

12 MR. PAVONE: I object.

13 THE COURT: Overruled.

14 BY MR. SCELSI:

15 Q Did you have a conversation with her about a drug
16 rip-off?

17 A I said to her that I knew that she was involved in
18 something, and I said it would have had to be a
19 rip-off because that is all this guy did. Her
20 answer to me was that he has good dope, and I
21 said, "No, this guy doesn't have good dope."

22 THE COURT: What guy?

23 THE WITNESS: Jerry Brooks.

24 BY MR. SCELSI:

25 Q Let me be more specific. You got on the subject of

1 Jerry Brooks, is that correct?

2 A Right.

3 MR. PAVONE: I object to this

4 line of questioning.

5 THE COURT: Overruled.

6 BY MR. SCELSI:

7 Q And you had a conversation with her, and about the
8 sale of the marijuana or something, to Mr. Cavallaro,
9 isn't that correct?

10 A I had no idea to whom.

11 Q And what did -- did they tell you she was involved
12 in the deal at that time?

13 A Well, I guess -- yes, I would say that we discussed
14 it so when I said -- I knew she was into something,
15 and she said to me, because she had been going with
16 this Jerry Brooks for this last couple of days,
17 that Thursday and Friday, and I had observed them
18 walking across the street from the place that I
19 now was dwelling, and as a matter of fact, that
20 Wednesday or Thursday night I had said to Jerry
21 Brooks that I don't want that chick involved be-
22 cause I knew what he did, of course, and I don't
23 want the chick involved, and so apparently they
24 just went along, anyway.

25 Q And you saw her in the company of Jerry Brooks,

1 then?

2 A Yes, sir.

3 Q Before the 5th, is that correct?

4 A Right.

5 Q Well, let me ask you this: What did she tell you
6 regardless -- I mean, about any rip-off, or rip-
7 offs?

8 A As long as they got paid.

9 Q She didn't care who he ripped off as long as she
10 got paid?

11 A She said she didn't care about it as long as she
12 got what was coming.

13 Q You said that you didn't want her getting involved
14 in any rip-off and she said she didn't care as
15 long as she got her money?

16 A As long as she got what she had coming, something
17 to that effect.

18 MR. PAVONE: I object.

19 THE COURT: Overruled.

20 BY MR. SCELSI:

21 Q And this was on the night of December what?

22 A The 7th.

23 Q Yes, December 7th, 1975, is that correct?

24 A Yes.

25 Q And did she admit to you that she had gone to --

1 (Whereupon, the following pro-
2 ceedings took place before the Court, without
3 the presence of the jury.)

4 THE COURT: I have your requests
5 to charge. Do you withdraw the earlier ones
6 that you had in writing, and which set do you
7 want me to act on? These seem to be pretty
8 much a repetition of what you had. I have
9 given my ruling in the margin, and they are
10 that I will give, in substance your No. 1.

11 I deny No. 2 in the form in
12 which you ask it. Particularly this business,
13 "or any other person." This is not like the
14 Sinatra, Jr. case to which you rely.

15 I will charge that the victim --
16 if you find that she voluntarily consented to
17 be taken for a ride, or if the ride was pre-
18 arranged by her, or any other person, without
19 the knowledge or complicity of the defendants,
20 then they must find the defendant not guilty,
21 and that is what I will charge.

22 I will charge that the victim's
23 consent may be specialized or impliedly given,
24 and may be evidenced by all of the circumstances,
25 and not by actions or reactions. That doesn't

1 mean anything.

2 As to Request No. 3: That is not
3 the law. I refuse to do it. See United
4 States vs. Holland, and I don't have the
5 citation. It is in the Supreme Court.

6 So I deny or decline No. 3,
7 obviously.

8 MR. SCELSI: May we reserve our
9 exceptions for later?

10 THE COURT: You don't need to
11 take exceptions. The rule automatically gives
12 them to you, Mr. Scelsi.

13 MR. SCELSI: Thank you.

14 THE COURT: Bring in the jury.

15 (Whereupon, the following pro-
16 ceedings took place before the Court and the
17 jury.)

18 THE COURT: Good morning; proceed.

19 R I C H A R D S A M P S O N,
20 having been previously sworn, was examined
21 and testified further as follows:

22 MR. PAVONE: I believe the
23 witness is under cross-examination?

24 THE COURT: Yes.
25

1 in the hospital for four or five days after
2 December 10th.

3 THE COURT: Overruled.

4 BY MR. FINER:

5 Q Go ahead.

6 A She walked in the hospital and sat down on the bed,
7 and gave me a kiss, and said, "Why did I get
8 involved," and that she had everything and I said
9 to her, "I got you out of it." And she said, "I had
10 everything under control," and she looked at me
11 and turned and walked out of the room.

12 MR. FINER: That is all I have.

13 MR. PAVONE: I have no more
14 questions.

15 (Whereupon, the witness was
16 excused.)

17 MR. PAVONE: Call David L. Baer.

18
19 D A V I D L. B A E R,
20 called as a witness, having been first duly
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PAVONE:

24 Q Mr. Baer, would you please state your name and
25 address.

1 A David L. Baer, 312 South Liberty Street in Endicott,
2 New York.

3 Q Now, Mr. Baer, I would like to direct your attention
4 to December 10th, 1975. Where were you living at
5 that time?

6 A 312 South Liberty, Endicott, New York.

7 Q And are you acquainted with the defendant here
8 in this case, Mr. Anthony Cavallaro?

9 A Yes, I know him.

10 Q And is Mr. Cavallaro a friend of yours?

11 A Well, yes. In a way.

12 Q Now, Mr. Baer, on the 9th, the night of December 9th
13 or 10th, 1975, were you paid a visit by Mr.
14 Cavallaro?

15 A I can't recall dates too well. That was -- yes, I
16 was.

17 Q About what time did he pay you that visit?

18 A I can't remember which -- I can't remember exactly
19 what time.

20 Q Was he alone?

21 A No, he wasn't.

22 Q Who was with him?

23 A Gerald Brown.

24 Q And did you know the gentleman as Gerald Brown at
25 that time?

1 A No, I didn't.

2 Q Did you subsequently learn his identity?

3 A Yes, I did.

4 Q And do you see Mr. Brown in the courtroom today?
5 Take your time and look around.

6 THE COURT: Stand up, so that you
7 can see.

8 THE WITNESS: No, sir, I don't.

9 BY MR. PAVONE:

10 Q You don't see him? But you did, later, learn the
11 identification of the man as Gerald Brown? Would
12 you describe him, please.

13 A Tall, heavy, like a football player.

14 Q And what color hair did he have, do you recall?

15 A Blonde -- no, I really can't. Blonde, something
16 like that. I only saw him briefly.

17 Q Any other distinguishing features?

18 A Well-dressed.

19 Q And he was well-dressed? Do you recall what he
20 had on that day?

21 A A brown leather jacket.

22 Q Now, tell me what was the purpose of the visit by
23 this gentleman.

24 MR. FINER: I object to the form
25 of the question.

1 THE COURT: Sustained.

2 BY MR. PAVONE:

3 Q Let me ask you this, Mr. Baer: When Mr. Cavallaro
4 and this other gentleman, which you say was Mr.
5 Brown, came to visit you, what did they say?

6 MR. SCELST: I will object, your
7 Honor.

8 THE COURT: Yes, it is in the
9 plural. What did who say? Identify the
10 speaker. They don't sing in a chorus, as I
11 told you yesterday.

12 MR. PAVONE: I beg your pardon,
13 your Honor.

14 BY MR. PAVONE:

15 Q What did Mr. Cavallaro say?

16 A Mr. Cavallaro didn't say very much at all. He
17 wasn't the one speaking.

18 Q What did the other gentleman say, Mr. Brown?

19 A He wanted to know the whereabouts of two people,
20 a Mr. Gerald Brooks, and David LaMont.

21 Q Did he say anything else?

22 A No, sir.

23 Q What happened next? Did they leave, or did you
24 go with them, or did you go somewhere with them?

25 A I believe that after they left they came back later.

1 I am not too sure, but I believe that that was
2 the way it was.

3 Q They came back later?

4 A I believe so, because they wanted to talk with
5 my girlfriend, Mary Shepherdson.

6 Q And do you recall what time that was?

7 A No, I don't, sir.

8 MR. SCELST: I would like to know
9 more about these times.

10 THE COURT: Yes, fix the times.

11 BY MR. PAVONE:

12 Q Yes. Do you recall what time it was?

13 A I would say it would be in the afternoon. That is
14 probably close.

15 Q When was that, the first time that they came in?

16 A I believe that that would be the second time that
17 they came in, just before we went down to Debbie
18 Buchanan's house.

19 Q And how about in the evening; did you see the
20 gentleman again in the evening?

21 A Well, I believe that you are talking about the
22 time that they wanted to talk to Mary, and they
23 called me up on the telephone?

24 Q Yes. That is exactly the time that I am referring
25 to. Do you recall that now, do you?

1 A Yes, sir. I do.

2 Q And about what time was that?

3 A I would have to say it was about 9 p.m.

4 Q Nine p.m.?

5 A Nine or ten.

6 Q And what happened when they visited you at that
7 time?

8 A Well, they didn't really visit me. They called me
9 up on the phone and told me that they wanted to
10 talk to Mary because they had talked to Mary prior,
11 and Mary was getting some information together for
12 them as to the whereabouts of Jerry Brooks, and
13 how to get there, and she was expecting them to come
14 anyway, and they called me up and said that they
15 wanted to go down and they wanted me to be there
16 since Mary was my girlfriend. So I called up Mary,
17 and I told her we were coming down, and she was
18 expecting them, again, and she had the information
19 together --

20 Q (Interrupting) Excuse me. Okay, Mr. Baer, but
21 did you go with these gentlemen?

22 A Yes, I did. They came down and picked me up.

23 Q And then where did you go? You got in the car
24 with them?

25 A Yes.

1 Q And where did you go?

2 A We went to Debbie's house to pick up Mary.

3 Q And did they pick up Mary at that time?

4 A Yes, they did.

5 Q And then what happened?

6 A Jerry went in and got her. They were in for about
7 three or five minutes. Then they came out, and
8 she got in the front seat, and Jerry got in the back
9 seat, and we just started driving.

10 Q Who was driving?

11 A Tony Cavallaro was driving.

12 Q Where were you sitting?

13 A I was just sitting in the back seat directly behind
14 Tony, and Mary was on Tony's right, and Jerry was
15 on my right.

16 Q Now, during that car ride, did Tony Cavallaro say
17 anything?

18 A He didn't say very much. He wasn't the person
19 really talking.

20 Q Did Gerald Brown say anything?

21 A Yes. He wanted to know if Mary had anything to
22 do with the alleged rip-off, or whatever happened.

23 Q Jerry Brown was directing the inquiries to Mary
24 Shepherdson?

25 A Right.

1 Q And did there come a time when the car stopped?

2 A Yes.

3 Q Do you recall where it was when the car stopped?

4 A No, I didn't know the area at all. They were just
5 riding.

6 Q What happened when the car stopped?

7 A We got out of the car and, and a -- and me and --
8 well, I had to go to the bathroom, and Tony did,
9 and I guess they were kind of, you know, they were
10 riding Mary a little bit, or Jerry was riding Mary
11 a little bit --

12 THE COURT: (Interrupting) What
13 was he doing?

14 THE WITNESS: He was riding her
15 a little bit.

16 THE COURT: What do you mean by
17 riding her? What did he say?

18 THE WITNESS: He wanted to know
19 if she had anything to do with the alleged
20 rip-off.

21 THE COURT: Is that the way he
22 said it? "Did you have anything to do with
23 the alleged rip-off?" Tell us what he said.

24 THE WITNESS: Yes, he came right
25 out and said that.

1 THE COURT: Alleged?

2 THE WITNESS: Not alleged.

3 THE COURT: I didn't think so.

4 Tell us what he said.

5 THE WITNESS: He wanted to know
6 did she have anything to do with the rip-off
7 that occurred -- which was a couple of days
8 before, or something like that.

9 THE COURT: And what did she say?

10 THE WITNESS: She was saying
11 nothing, she didn't.

12 THE COURT: And did she say
13 anything whether she knew anything about it?
14 What did they say? You see, we weren't there,
15 and we are trying to find out what happened,
16 and you have to tell us as best you can remember
17 what was said about being involved.

18 THE WITNESS: That is exactly
19 what I am trying to do.

20 THE COURT: Try harder.

21 THE WITNESS: Mm-hmm. All Mary
22 was really saying was that they didn't -- she
23 didn't know anything about it, even though
24 she was one of the people that they went
25 through the channels to get to Tony. She

1 said she didn't know anything about the rip-off,
2 and Jerry Brown was trying to find out if she
3 was -- if she was telling the truth a little
4 bit.

5 THE COURT: What did he say, and
6 what did he do to try and find out if she was
7 telling the truth?

8 THE WITNESS: He just kept asking
9 her over and over if she had anything to do
10 with it.

11 THE COURT: And what was his
12 tone of voice?

13 THE WITNESS: He was trying to
14 sound angry.

15 BY MR. PAVONE:

16 Q Now, Mr. Baer, when the car stopped, what happened?
17 Did everybody get out of the car?

18 A Yes, everybody got out of the car. I had to go to
19 the bathroom, and Tony did, and I told Tony to
20 more or less lay off her, and put some pressure on
21 me, and when we -- I told him to have -- to have
22 a -- to have Gerald Brown, you know, shoot some
23 random shots in the air, and so Jerry Brown told
24 us both to stand up against the side wall, and it
25 was just a role that he was putting on, and he

1 THE WITNESS: Well, crack? Is
2 that the term that you want to use? Yes.

3 THE COURT: And that she would
4 tell whatever she knew?

5 THE WITNESS: Right. And she
6 didn't know anything, so he just got back in
7 the car, and everything was settled, and we
8 went to some bar and drank, and there was no
9 more discussion of it.

10 MR. PAVONE: I would like to have
11 this exhibit marked as Government Exhibit No.
12 1 for identification, please.

13 THE CLERK: Government Exhibit
14 No. 1, marked for identification.

15 (Document marked Government
16 Exhibit No. 1 for identification.)

17 THE COURT: I take it that Mary
18 wasn't in on this little game of pretending
19 to shoot you and put pressure on you?

20 THE WITNESS: She wasn't in on it?
21 You mean she didn't know?

22 THE COURT: Yes.

23 THE WITNESS: This was just all --
24 no, no.

25 THE COURT: It was all staged?

1 THE WITNESS: Right.

2 MR. SCELSI: May I have a voir
3 dire on this?

4 THE COURT: It isn't offered in
5 evidence.

6 MR. PAVONE: I am about to hand
7 it to the witness.

8 MR. SCELSI: You have not offered
9 it, yet?

10 MR. PAVONE: No, I haven't. I'm
11 about to question the witness about the
12 document.

13 BY MR. PAVONE:

14 Q I hand you what has been marked as Government
15 Exhibit 1 for identification, and ask you if you can
16 recognize it (offering)?

17 A Yes, sir.

18 Q Pardon me?

19 A What was your question, now?

20 Q Do you recognize that document?

21 A Oh, yes.

22 Q And are you the author of that document? Did you
23 draw that sketch?

24 A Well, it is pretty crude, and I imagine I could
25 have, yes.

1 BY MR. FINER:

2 Q (Interrupting) That she was going to Colorado
3 with Jerry Brooks, right?

4 A Right. Well, she was thinking of it. She didn't
5 say she was.

6 Q On December 10th, you testified that you called
7 Debbie Buchanan's apartment?

8 A Yes, sir.

9 Q And you called her and you said it was around nine
10 o'clock?

11 A Okay. I know when you mean, yes, sir.

12 Q And did you talk, at that time, did you talk to
13 Mary Shepherdson?

14 A Yes, I did.

15 Q And did you tell her that you were coming over to
16 talk to her about the drug deal and the information
17 regarding Jerry Brooks?

18 A That is when I told her -- I didn't tell her we
19 were coming over. I told her that we were coming
20 over to pick her up because we had been -- we had
21 been hanging around the apartment all day, and
22 didn't want to make a big scene. Okay. Did you --
23 were you in the car at the time when Mary Shepherdson
24 was escorted out of the apartment with Jerry Brown,
25 is that right?

1 A Yes, I was.

2 Q And did you observe any force that Mr. Brown was
3 using against Mary Shepherdson?

4 A No, I didn't.

5 THE COURT: You say that you
6 were in the apartment?

7 THE WITNESS: No, sir, I was
8 in the car.

9 THE COURT: You were in the car?

10 THE WITNESS: Yes, sir.

11 THE COURT: And it was dark,
12 wasn't it?

13 THE WITNESS: Yes, but it was all
14 lit up there. It was in the parking lot.

15 THE COURT: You couldn't see
16 what was going on inside the house?

17 THE WITNESS: No.

18 THE COURT: And what was said
19 inside some house?

20 THE WITNESS: No, sir.

21 THE COURT: Who went in the house?

22 THE WITNESS: Jerry Brown did.

23 THE COURT: And how long was he
24 there?

25 THE WITNESS: Three or five

1 minutes, or something like that.

2 BY MR. FINER:

3 Q Didn't Mr. Brown open the car door for Mary
4 Shepherdson?

5 A Yes, he did.

6 Q And did he push her into the car?

7 A No, he didn't. As a matter of fact he opened
8 his own door and got in after she got in her side.

9 Q She got in after he did?

10 A No, before he did.

11 Q At any time during that car ride did Jerry Brown
12 hold Mary Shepherdson's hands behind the car seat?

13 A No, sir, he did not.

14 Q Did he hold her hands in any position?

15 A Not that I can recall.

16 Q You said that you observed Jerry Brown when he
17 escorted Mary Shepherdson from the apartment and
18 into the car?

19 A I observed -- I observed it from right when they
20 walked out the door. But when they crossing the
21 street, that is when I noticed that they were coming.

22 Q And did you observe whether or not his coat was
23 opened or buttoned?

24 A No, sir, I didn't.

25 Q Do you recall how long a period of time you were in

1 the bar, that you testified to?

2 A I would say that at least an hour or an hour and a
3 half.

4 Q You are sitting there having drinks?

5 A Right, because -- because, let's see: When we
6 left the bar it was too late to buy -- to buy beer
7 in New York State. So I remember we got some there.

8 THE COURT: Where was the bar,
9 do you know?

10 THE WITNESS: I don't know the
11 exact location.

12 THE COURT: You were able to buy
13 drinks, then, when you couldn't get them in
14 New York?

15 THE WITNESS: That means it was
16 past four o'clock.

17 THE COURT: What does it mean?
18 Where were you located, in Pennsylvania?

19 THE WITNESS: Yes, we were in
20 Pennsylvania.

21 MR. SCELSI: I have just one more
22 question -- two or three questions.

23 BY MR. SCELSI:

24 Q The afternoon of this particular day, was Mary
25 Shepherdson at Debbie Buchanan's apartment?

1 A This particular day? Are you talking about the 10th?

2 Q Yes, in the afternoon?

3 A She was, off and on, yes.

4 Q And was she there while Mr. Cavallaro and Mr.
5 Brown were there?

6 A Yes, she was.

7 Q And there came a time when Mr. Cavallaro and Mr.
8 Brown went to the Zodiac, is that correct?

9 A You are talking about that time? I thought that
10 you were talking about --

11 Q (Interrupting) In the afternoon of December 10th
12 at the Zodiac Bar, down the street?

13 A Yes, down the street. That is when we left to go
14 to the Zodiac and drink for a while.

15 Q And isn't it true that when Mary Shepherdson came
16 back to the Welfare office, you talked to her, and
17 she said she would get Mr. Brooks' address, because
18 she wanted to --

19 A (Interrupting) That's right.

20 Q Because they wanted to cooperate, is that right?

21 A Yes, sir.

22 Q And isn't that what she said?

23 A Yes, sir.

24 Q And I am referring to the Grand Jury minutes.
25 Now, I will read you a portion.

1 wanted to come up, so could she get the
2 correct address to get there.

3 THE COURT: Well, you mean she was
4 cooperating in trying to get this information
5 that she wanted, is that what you mean?

6 THE WITNESS: Yes, sir.

7 BY MR. SCELS :

8 Q Well, during the day, when you saw her, did she at
9 any time appear to be frightened or anything?

10 A No, sir.

11 Q She had known Cavallaro for a long period of time,
12 isn't that correct?

13 A About a year, sir.

14 Q And isn't it true that when you were going with
15 Mary Shepherdson that you used to take Mary
16 Shepherdson's baby up to Mrs. Cavallaro to babysit?

17 A Yes, sir.

18 And she knew Mr. Cavallaro for a period of time,
19 didn't she?

20 A Yes, sir.

21 THE COURT: Who fired the shots
22 into the air?

23 THE WITNESS: Mr. Brown did.

24 THE COURT: Where did he get the
25 gun?

1 THE WITNESS: I have no idea,
2 sir. He had it.

3 THE COURT: Where did he get it?
4 Did you see where he took it from?

5 THE WITNESS: Probably under his
6 coat.

7 THE COURT: Did you see him reach
8 for it, under his coat?

9 THE WITNESS: No, sir, I didn't.

10 THE COURT: How many shots were
11 fired?

12 THE WITNESS: Three, sir.

13 THE COURT: Do you have any
14 redirect?

15 MR. PAVONE: Yes, your Honor.
16 Just a couple.

17 REDIRECT EXAMINATION

18 BY MR. PAVONE:

19 Q Mr Baer, who is Jerry Brooks, and this fellow,
20 LaMont, that you mentioned on cross-examination?

21 A Who are they?

22 Q Yes.

23 A They were friends of Mary's. That is all I know.

24 Q Did you introduce them to Tony Cavallaro?

25 A Yes, I did.

1 Q Now, you say Mary cooperated. Did she supply this
2 address to Tony Cavallaro and Jerry Brown?

3 A No, sir, she supplied it to Jerry Brown.

4 Q That is before the car ride?

5 A That was during the car ride.

6 Q And they chose to keep going on the car ride, isn't
7 that correct?

8 A Tony didn't know -- Tony Cavallaro didn't know
9 that she had submitted that. The car ride was
10 just primarily to talk.

11 Q Just answer the question, please, Mr. Baer.

12 A Yes, sir.

13 Q Now, you stated on cross-examination that Mary
14 was never frightened?

15 A During the daytime, sir?

16 Q Well, how about at night, during the car ride?

17 A During the car ride, she was a little bit
18 frightened.

19 Q A little bit?

20 A Yes, sir.

21 Q And didn't you state to the FBI that she was
22 hysterical during the car ride?

23 A She was frightened.

24 THE COURT: Did you tell the FBI
25 that she was hysterical?

1 THE WITNESS: I could have, yes,
2 sir.

3 THE COURT: You could have? Did
4 you, or didn't you?

5 THE WITNESS: I don't know. It
6 all depends on how I worded it at that time.

7 THE COURT: Do you have the
8 statement?

9 MR. PAVONE: Yes, I do. I would
10 like to hand it to the witness, and perhaps he
11 can refresh his memory.

12 MR. SCELSI: I don't know what
13 this is.

14 THE COURT: Go ahead, proceed.

15 MR. PAVONE: May I have that
16 marked as an exhibit?

17 THE CLERK: Government's Exhibit
18 2, marked for identification.

19 (Document marked Government's
20 Exhibit 2 for identification.)

21 BY MR. PAVONE:

22 Q Mr. Baer, I hand you what has been marked as
23 Government Exhibit No. 2 for identification, and
24 I ask you if you would please read the bottom
25 paragraph to yourself --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. SCELSI: (Interrupting)

I don't think that there is sufficient
foundation --

THE COURT: (Interrupting) Over-
ruled.

BY MR. PAVONE:

Q On the bottom of the page --

MR. SCELSI: (Interrupting) What
page is that?

MR. PAVONE: This is Mr. Baer's
statement to the FBI, dated 12/18/75, and
page 3. It is marked page 25 at the bottom,
and page 3 at the top.

THE COURT: Did you tell the
FBI that she was hysterical, or not?

THE WITNESS: I will say yes.

THE COURT: All right, next
question.

MR. PAVONE: I have no more
questions, your Honor.

THE COURT: You are excused.
(Whereupon, the witness was
excused.)

MR. PAVONE: Your Honor, I will
call Richard Worst.

1 RICHARD WORST,
2 called as a witness, being first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PAVONE:

6 Q Mr. Worst, would you please tell the jury what
7 your occupation is.

8 A I am a Special Agent with the FBI.

9 Q And how long have you been so employed?

10 A Seven years.

11 Q Now, Mr. Worst, are you the case --

12 THE COURT: (Interrupting) Mr.
13 Pavone, could you keep your voice up a little?
14 Instead of standing back there mumbling, be-
15 cause I can hardly hear you.

16 MR. PAVONE: I am terribly sorry.

17 B MR. PAVONE:

18 Q Are you the case agent who was assigned to investigate
19 this matter before the Court today?

20 A I was.

21 Q And what was the investigation predicated upon,
22 please?

23 MR. SCIELTO: I didn't hear the
24 question.

25 THE COURT: I didn't hear it

1 Fitch and Mary Shepherdson and Debbie
2 Buchanan at the Broome County Sheriff's
3 Department. Then we interviewed David Baer
4 at the residency of the FBI in Binghamton.

5 THE COURT: When?

6 THE WITNESS: I believe that
7 David Baer was interviewed on the 18th of
8 December, and I think the other interviews
9 took place around the 15th or 16th. I am not
10 exactly sure.

11 THE COURT: All right.

12 BY MR. PAVONE:

13 Q I hand you what has been marked as Government
14 Exhibit No. 1 for identification and ask you if
15 you recognize that (offering)?

16 A I do.

17 Q And did you draw that exhibit?

18 A No, I did not.

19 THE COURT: Who drew that
20 exhibit?

21 BY MR. PAVONE:

22 Q Who drew it?

23 A David Baer drew the exhibit, and in Pennsylvania,
24 and the pen notations were done by then Special
25 Agent Robert Kennedy, who has subsequently retired.

1 Q When did David Baer draw that diagram?

2 A I believe it was the date of the interview and
3 that was the 18th.

4 THE COURT: Where did you get
5 the information or the legend on the writing
6 in this exhibit?

7 THE WITNESS: Excuse me, I
8 didn't understand you.

9 THE COURT: Who gave you the
10 information, other than just the lines? Who
11 gave you the name, for example, that appear
12 on those lines?

13 THE WITNESS: David Baer.

14 THE COURT: And you made that
15 statement which appears at the bottom?

16 THE WITNESS: It was written by
17 Special Agent Kennedy, and witnessed by myself.

18 THE COURT: But who gave you the
19 information?

20 THE WITNESS: David Baer.

21 MR. PAVONE: I move the ad-
22 mission into evidence of the sketch.

23 MR. SCELSI: Wait a minute.

24 THE COURT: You offer it and show
25 it to him, and then offer it in evidence.

1 them, did you?

2 THE WITNESS: No.

3 THE COURT: Who identified them?

4 THE WITNESS: David Baer.

5 BY MR. SCELSTI:

6 Q I am asking you who did the writing on there?
7 Whose penmanship is all of this?

8 A That is Mr. Kennedy's.

9 Q Okay. Then it was Mr. Baer that wrote this, wasn't
10 it?

11 A If you are talking about the paragraph at the top,
12 no, that was not Mr. Baer.

13 Q It was put in after -- I will withdraw that.

14 MR. SCELSTI: That is all.

15 BY MR. PAVONE:

16 Q Who put the pencil notations on the exhibit?

17 A Mr. Baer.

18 MR. PAVONE: I offer the exhibit
19 in evidence, your Honor.

20 MR. SCELSTI: Well, I have no
21 objection to it, as to the part that Mr. Baer
22 put on there.

23 THE COURT: Overruled. Proceed.

24 THE CLERK: Government's Exhibit
25 No. 1 received in evidence.

1 MR. SCELSE: Probably only one
2 person.

3 THE COURT: All right. Be
4 prepared to sum up following that. Bring in
5 the jury.

6 (Whereupon, the following
7 proceedings took place before the Court and
8 the jury.)

9 MR. SCELSE: Call Ronald C. Steele.
10

11 R O N A L D C. S T E E L E,
12 called as a witness, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SCELSE:

16 Q Your name, for the record, is Ronald Steele?

17 A Yes, sir.

18 Q And where do you live, Mr. Steele?

19 A Springville, Pennsylvania.

20 Q And do you recall being questioned by a law officer
21 relative to an incident that occurred on the
22 night of December 10th?

23 A Yes, sir, 1975?

24 Q Yes.

25 A Yes, sir.

1 Q And where were you at that particular time?

2 A Tending bar in South Mount Road, Redinger.

3 Q And were you working there at that time?

4 A Yes.

5 Q And at around midnight or prior to that, or around
6 this time of the night of December 10th, did four
7 individuals come into your office that you didn't
8 recognize?

9 A Yes, sir.

10 Q And was this gentleman here one of the individuals
11 (indicating)?

12 A Yes, sir.

13 Q And was this gentleman over here one of the in-
14 dividuals (indicating)?

15 A Yes, sir.

16 Q And I am pointing to the defendant Brown.

17 A Yes, sir.

18 Q And was there another gentleman and a lady with
19 him?

20 A Yes.

21 Q And would you describe this girl?

22 A She was short, and reddish-colored hair.

23 A Now, what did you observe when these people walked
24 in?

25 A They came in and went to the back of the bar.

1 Q And did you observe anything unusual about any
2 of them?

3 A No.

4 Q Except for the fact that they were strangers, isn't
5 that correct?

6 A Yes.

7 Q And did they have some drinks at the bar, or were
8 drinks ordered?

9 A They ordered them at the bar, and took them to the
10 tables, sir.

11 Q And you waited on them?

12 A Yes, sir.

13 Q And do you recall this because you were later --

14 MR. PAVONE: (Interrupting)

15 Objection to the form of that question.

16 THE COURT: Sustained.

17 BY MR. SCELSI:

18 Q Were you later questioned by the Federal Bureau of
19 Investigation about this?

20 A Yes, sir.

21 Q That is why there is a recollection, is that correct?

22 A Pardon?

23 Q This helps your recollection -- helps you recollect
24 this particular night of December 10th, isn't that
25 correct?

1 A Well, it was local enforcement, and plain clothes-
2 men from New York State, first.

3 Q And then, were there other people in the bar?

4 A Yes, sir, five or six.

5 Q Now, did you notice whether or not Mary Shepherdson
6 went to the ladies room?

7 A I did not see her leave the table.

8 MR. PAVONE: Objection, your
9 Honor, to the form of the question.

10 THE COURT: Sustained. It is
11 too late after the answer come Mr. Pavone.

12 BY MR. SCELSI:

13 Q At any time during the period of the night, did you
14 observe whether or not Mrs. --

15 MR. PAVONE: (Interrupting) I
16 object to the form of that question.

17 THE COURT: Overruled. Ask him
18 whether or not, or what he observed.

19 BY MR. SCELSI:

20 Q With respect to the young lady?

21 A What did I observe?

22 Q Yes.

23 A Nothing out of the ordinary.

24 Q And did she stay at the table all night?

25 A As far as I know she stayed at the table, yes.

1 Q And about what time did they leave?

2 A At about one-thirty.

3 Q And about how long were they in the place?

4 A Approximately an hour and a half.

5 Q Do you recall what they were drinking?

6 A The young lady was drinking scotch, and they were
7 drinking Budweiser beer, and the smaller guy was
8 drinking, on the rocks, and it was shots of White
9 Silver.

10 MR. SCELSE: Nothing else.

11 THE COURT: Any cross-examination?

12 MR. PAVONE: No, sir.

13 THE COURT: You are excused.

14 Does the defendant rest?

15 MR. SCELSE: We rest, your Honor.

16 MR. FINER: Defendant Brown rests.

17 THE COURT: Any rebuttal?

18 MR. PAVONE: No rebuttal, your

19 Honor.

20 THE COURT: Sum up.

21 MR. PAVONE: Well, ladies and
22 gentlemen, we have reached the end. I intend
23 to be very brief in my remarks.

24 I think I told you in the begin-
25 ning that it was the government's position

1 two other men, that we know of. She has had
2 welfare assistance. She was living with and
3 without the benefit of matrimony. She has
4 admitted to her case worker about drugs and
5 drug rip-offs. She has admitted that she has
6 taken drugs.

7 Now, she has only admitted
8 occasional smoking of pot, and one use of
9 cocaine. Well, I leave it to you to submit
10 whether she was truthful, or whether she
11 smoked pot a lot and used cocaine a lot, and
12 this is up to you. She probably intentionally
13 minimized her admission. There is no question
14 about that.

15 Now, I believe that I have covered
16 all of the witnesses, and I have covered this
17 entire situation. Mary Shepherdson, who
18 voluntarily went on this ride, who knew about
19 it and may have had some reason for fear in
20 Pennsylvania, after the shots were fired, but
21 there is no evidence here that the shots were
22 fired at her, or that she was injured. She
23 may have been upset later, as Mr. Worst put
24 it in his writing, but it was after the
25 shooting, and that is not the crux of the

1 crime of kidnapping. The crux of the crime of
2 kidnapping is taking her unlawfully from that
3 house.

4 Mary Shepherdson --

5 THE COURT: (Interrupting) No,
6 that is not the law. It is to transport her
7 and hold her and trick her against her will.
8 I suggest that you leave the law to me.

9 MR. SCELSI: The Court will tell
10 you what the law is.

11 THE COURT: That is a blatant
12 misquotation.

13 MR. SCELSI: The Court will tell
14 you what the law is. The facts you will have
15 to determine from the mouths of the witnesses,
16 and the witness Mary Shepherdson.

17 Was she, who in fact was involved
18 in this situation from December 5th practically
19 five days prior up to that night, who was in-
20 volved in it, and up to her neck, was she
21 taken from that house, in violation of the
22 law of the United States of America? I submit
23 from the evidence, and her being entrenched
24 in it, and wanting to get out of the situation,
25 that she wanted and agreed to go with these

1 defendants in order to clear her skirts and
2 get the situation over with. She knew, she
3 received calls, she had all kinds of op-
4 portunity if she was fearful before they had
5 come, to evade it. She got in this situation,
6 she was not a child, and she is not a six-
7 year-old child, she was in the situation and
8 she was willing to cooperate, willing to talk
9 to the defendants in this particular matter
10 and to try and clear her own skirts.

11 Now, I am sorry and I know that
12 I have been lengthy. However, again, the
13 two defendants, they have their one day here
14 in court; two or three days, and to them, and
15 to me, this is a very important situation,
16 and I ask you to very carefully evaluate the
17 testimony. Evaluate the truthfulness of
18 Debbie, and the truthfulness of Mary in their
19 situation as to whether she entered the car
20 voluntarily or not. I submit to you that if
21 you give this entire matter your careful
22 consideration, I respectfully request that
23 again you don't decide this case on extraneous
24 facts, but more important things like drug
25 dealings and so forth, and what happened on

1 this particular night at this particular time.
2 And I submit that if you do, you will certainly
3 find an acquittal for the defendant Cavallaro,
4 whom I represent, and defendant Brown, and
5 also Cavallaro, especially in view of the
6 fact that much of the testimony is that he did
7 not use any force, he did not fire the gun,
8 and so forth, but I submit that both of these
9 defendants here should be exonerated, and I
10 respectfully request that you bring in a verdict
11 of not guilty.

12 THE COURT: We will take our
13 luncheon recess at this point. We will take
14 the usual half hour.

15 (Whereupon, the jury was excused.)

16 THE CLERK: Court stands in recess
17 for one-half hour.

18 (After a short luncheon recess,
19 the proceedings were resumed as follows.)

20 THE COURT: Bring in the jury.

21 (Whereupon, the following took
22 place before the Court and the jury.)

23 MR. PAVONE: Ladies and gentlemen,
24 Mr. Scelsi went through quite some elaboration
25 of his recollection of all of the facts. I

1 I just might say that I believe
2 that recollections differ in many, many things.
3 For example, a couple of items I recall
4 vividly mentioned by Mr. Scelsi. I believe
5 that Mr. Scelsi said that Mary Shepherdson
6 introduced this Jerry Brooks to Tony Cavallaro.
7 My recollection this morning was that David
8 Baer testified that it was he, Baer, who had
9 introduced Brooks to Tony Cavallaro. So,
10 Mr. Scelsi and Mr. Finer, as I recollect,
11 tried to, or argued, that this whole ride,
12 the car ride in question, at night, was a
13 ride among a whole bunch of good friends.

14 Well, my recollection of the
15 testimony is that none of the people involved,
16 except for David Baer, were particularly good
17 friends of Tony Cavallaro, and all of them,
18 without question of a doubt, said that they
19 had never seen Mr. Brown before that par-
20 ticular day.

21 Now, in connection with this
22 Defendant's Exhibit A, of some formal report
23 of suspected child abuse or maltreatment,
24 the only testimony that I recall about this
25 is that it was in the Social Welfare's file,

1 and it had been filed, or the document speaks
2 for itself here, and it had been reported by
3 one Peggy Russell, the only person who had
4 known about Peggy Russell was the agent Worst,
5 and the statement that Peggy Russell was
6 supposed to have made was attributed to
7 Richard Worst, the agent. You heard him
8 testify that he had never made that statement
9 in his entire life.

10 The important part of this case,
11 though, ladies and gentlemen, is that car
12 ride the night of December 10th. The only
13 testimony that you have before you about
14 what happened on that car ride is the
15 testimony of the victim, Mary Shepherdson, and
16 that testimony is corroborated by David Baer,
17 who you heard this morning. He was reluctant,
18 but he corroborated in essence in the fact
19 of that car ride on the night of December 10th,
20 1975.

21 You saw Mary Shepherdson
22 testify, and you observed her demeanor, and
23 you will be the judges of the car ride of
24 that night.

25 I would like to make one observation

1 of the entire case. It appears to me that
2 the entire defense in this case has been
3 something like this: Mary Shepherdson lived
4 an unusual life style, and because of that
5 unusual life style she deserved exactly what
6 happened to her on that night. Well, I
7 submit to you, ladies and gentlemen, that
8 regardless of your life style, the laws of
9 the United States have to protect everybody,
10 not just people who lead undesirable life
11 styles.

12 Thank you very much.

13 THE COURT: As I have explained
14 to many of you earlier, but for the benefit
15 of some of you who are serving on the Jury for
16 the first time: It now becomes my function to
17 instruct you on the law which applies to this
18 case. Now, I am the explicit judge of the
19 law. You will recall I had to interrupt Mr.
20 Scelsi, not because I wanted to, and I hate
21 to interrupt a lawyer, but he was misstating
22 the law. I am sure that was not intentional,
23 but nevertheless, I wanted to make sure that
24 you didn't get the wrong idea about the law.

25 It is my exclusive function to

1 tell you about the law and it is your duty to
2 accept the law as I give it to you, whether or
3 not you agree with it, or whether you think
4 that the law ought to be something different
5 from what I say it is.

6 Now, just as I am the exclusive
7 judge of the law, you are the exclusive
8 judges of the facts. You, and you alone,
9 decide what weight, what effect, and what
10 value you will give to the evidence; you will
11 decide whether or not to believe a witness,
12 and, of course, ultimately you, and you alone
13 decide whether each defendant in this case
14 is guilty or not guilty of the charges made
15 against him.

16 Now, you are not to conclude from
17 any rulings that I have made throughout this
18 trial, or any questions that I have asked
19 that I have any opinion whatsoever one way
20 or the other as to whether any defendant is
21 guilty or not guilty. That decision is
22 exclusively up to you. I hesitate, always,
23 to ask questions. It is not my function to
24 ask questions ordinarily, but it is my
25 function to try to make things clear so

1 that you understand it, and when lawyers
2 don't do it, then the Court has to take it
3 over.

4 Now, just because I have asked
5 a question here and there doesn't mean that
6 my questions carry any greater import than the
7 questions of any lawyer. These are just
8 questions. It is the answers that you are
9 concerned with.

10 Now, how do you go about finding
11 the facts? Finding the facts are merely a
12 process by which you, the jury, consider the
13 exhibits which have been received in evidence,
14 consider the testimony of all of the witnesses,
15 both on direct and on cross-examination, sift
16 out what you believe, weigh it in the scale
17 of your common sense, and your reasoning
18 powers, and draw such conclusions as you
19 believe the evidence supports and justifies,
20 and decide just where the truth lies here.

21 Now, in this connection, all
22 evidence may be of two general types; direct
23 and circumstantial evidence. Evidence is
24 direct when the facts are shown by exhibits
25 which are admitted into evidence, or when

1 sworn to by witnesses who have full knowledge
2 of them, from what they have learned through
3 the exercise of their fundamental senses.

4 In other words, something that the witness
5 has learned from something that he has ob-
6 served, something that he heard, something
7 that he touched, something that he smelled,
8 something that he tasted. Circumstantial
9 evidence simply means the drawing of a logical
10 conclusion from other facts established by
11 direct evidence. We all use the process in
12 our daily lives. We draw logical conclusions
13 from other connected facts.

14 If all the blinds were down and
15 somebody came into this courtroom with an
16 umbrella dripping with rain, you would draw
17 the logical conclusion -- if it were dripping
18 with water -- you would draw the logical
19 conclusion that it was raining outdoors.
20 The same here. There is no difference in the
21 process.

22 Now, no greater degree of cer-
23 tainty is required when evidence is circum-
24 stantial than when it is direct. For in
25 either case you must be convinced beyond a

1 reasonable doubt before you can find any
2 defendant guilty.

3 Now, in this connection it is your
4 memory of the evidence that controls and not
5 the way I remember it; not the way counsel
6 reme ers it. If your memory squares with
7 what the lawyers said during their summations,
8 as their version of the evidence, you may
9 accept what they say but to the extent that
10 you have a different recollection of the
11 evidence, you are bound by your oath to reject
12 what they say, and to rely on your own memory.
13 When I say your memory, I mean your col-
14 lective memory. One or more of you may help
15 to refresh the recollection of one or more
16 other jurors and you should resort to that
17 process so that you can recall the evidence.

18 One of your most important
19 functions is to decide which witness you
20 will believe, and this is so as to every
21 witness, whether called by the government or
22 by the defense. This also applies to the
23 FBI agents. You are not to be influenced by
24 the number of witnesses called. You are
25 concerned not with the quantity, but with

1 the quality of the evidence. The first test
2 which you ought to apply in determining the
3 trustworthiness of a witness is to measure
4 what he said as against your plain everyday
5 common sense. You are not bound to believe
6 unreasonable statements, or to accept testi-
7 mony that defies your common sense, or insults
8 your intelligence just because the statements
9 are made under oath in a courtroom.

10 In determining whether to be-
11 lieve a witness you should consider not only
12 what he said, but also his behavior and his
13 conduct on the stand. I saw you watching every
14 witness with particular care as the witness
15 testified. How did the witness impress you?
16 Was the witness frank and honest, or was he
17 evasive? Did his version appear to be
18 straightforward? Was he trying to cover up
19 or conceal any facts? Did he have any motive
20 to testify falsely? Is he interested in
21 any way in the outcome of this case? How
22 strong or weak was his memory of important
23 events? Did he forget the unforgettable?
24 Can you rely on him? Can you trust him?
25 Was he friendly toward any side in this case?

1 You ought to consider his
2 testimony and his opportunity to know the
3 facts about which he testified and the
4 probability or improbability of what he said
5 in light of the total circumstances shown
6 in the evidence. How did his evidence add
7 up when considered with all of the other
8 evidence? How far does his story check out?
9 Are there any inconsistencies in his testimony
10 and, if so, how important are they?

11 Has he made any inconsistent
12 statements on some earlier occasions, and
13 how important is that inconsistency? And
14 in determining whether he has made an in-
15 consistent statement on an earlier occasion,
16 you consider not only what he said, but what
17 he did not say. In other words, something that
18 he omitted on the earlier occasion.

19 Now, if you find that any witness
20 has deliberately and wilfully lied with
21 respect to any material fact in his or her
22 testimony offered at this trial, you may follow
23 either one of two courses: You may accept as
24 much of the witness' testimony as you believe,
25 or, you may reject, if you wish, his or her

1 entire testimony.

2 Now, neither defendant took the
3 stand. A defendant is not required to take
4 the stand and testify in his own behalf.
5 Neither defendant has any burden of proof
6 to sustain in this case. Both defendants
7 have denied the charges made against them
8 here by their plea of not guilty, and they are
9 presumed to be innocent. The fact that a
10 defendant has not testified cannot be taken
11 into consideration by you in any manner. You
12 may not permit that fact to weigh in the
13 slightest degree against either defendant,
14 nor should it enter into your discussions, or
15 deliberations in any way.

16 Now, before discussing the crime
17 charged here, I want to remind you that an
18 indictment is a mere accusation. It is not
19 evidence of the truth of the charge made
20 and you are to draw no inferences of guilt
21 from the mere fact that these defendants have
22 been indicted. An indictment simply means
23 that these defendants have been accused of
24 crime, and as I said, each defendant has
25 denied the charge made against him here by

1 his plea of not guilty, and he has no burden
2 of proof to sustain his case. He is under no
3 obligation to produce any witnesses. He is
4 presumed to be innocent and this presumption
5 of innocence continues throughout the trial,
6 and during your deliberations. This presumption
7 of innocence is overcome when and only when
8 the government establishes the guilt of a
9 defendant beyond a reasonable doubt.

10 As the phrase implies, a reason-
11 able doubt is a doubt that is based upon
12 reason. A reason which appears in the evidence
13 or in the lack of evidence. It is not some
14 vague, speculative, imaginary doubt, nor a
15 doubt based upon an emotion, sympathy or
16 prejudice, or upon what some juror might regard
17 as an unpleasant duty. The government is not
18 required to prove a defendant's guilt beyond
19 every possible doubt, nor to an absolute or
20 mathematical certainty, because such measure
21 of proof is usually impossible in human af-
22 fairs.

23 You should review all of the
24 evidence as you remember it. Sift out what
25 testimony you believe. Discuss the evidence,

1 analyze it, weigh it, compare your view of
2 the evidence with that of your fellow jurors.
3 If that process produces a solemn belief or
4 conviction in your mind, such as you would
5 be willing to act upon without hesitation
6 if this were an important matter of your own,
7 then you may say that you have been convinced
8 beyond a reasonable doubt.

9 On the other hand, if that after
10 going through that process, your mind if
11 wavering, or so uncertain that you would
12 hesitate to, before acting if this were an
13 important matter of your own, then you have
14 not been convinced beyond a reasonable doubt
15 and your verdict must be not guilty.

16 Now, the indictment here charges
17 that on or about December 10th, 1975, within
18 the Northern District of New York, Anthony
19 Cavallaro and Gerald J. Brown wilfully and
20 knowingly did transport in interstate com-
21 merce from Johnson City, New York, to the
22 State of Pennsylvania, Mary Shepherdson, who
23 had theretofore been unlawfully seized, in-
24 veigled, decoyed, carried away, and held by
25 the said Anthony Cavallaro and Gerald Brown for

1 ransom, reward, or otherwise, that is, for
2 the purpose of obtaining information.

3 The indictment then goes on to
4 cite Title 18, United States Code, Section 1201(a),
5 which is the kidnapping statute, and also
6 Section 2 of the United States Code, which is
7 the aiding and abetting statute.

8 So these defendants are therefore
9 charged with kidnapping, and with aiding and
10 abetting kidnapping.

11 The guilt or non-guilt of each
12 defendant must be determined by you separately.
13 Now, in the determination of the guilt or
14 innocence, you must bear in mind that there
15 are other things to consider. There is no such
16 thing under our system of justice as by mere
17 association. The guilt of each defendant must
18 be determined separately with respect to him,
19 solely on the evidence presented against him,
20 or on the lack of evidence.

21 Now, this indictment is based on
22 a federal kidnapping act, sometimes known as
23 the Lindbergh Law, which provides in pertinent
24 part: Whoever unlawfully seizes, confines,
25 inveigles, decoys, kidnaps, abducts, or

1 carries away and holds for ransome or reward,
2 or otherwise any person when the person is
3 wilfully transported in interstate commerce,
4 shall be guilty of a crime.

5 Now, the words "seizes, confines,
6 decoys, kidnaps or abducts, or carries away,"
7 all of them have ordinary and normal meaning.
8 The word "inveigles" means to lure, to trick,
9 to entice, to lead astray by false represen-
10 tations or promises, or other deceitful means.

11 The terms "interstate commerce"
12 simply means commerce between one state and
13 another. Therefore a person is transported
14 in interstate commerce when he moves or is
15 caused to be moved across state lines from
16 here, from New York to Pennsylvania.

17 Now, in order to convict the
18 defendant, whom you are considering, the
19 government must prove to your satisfaction
20 beyond a reasonable doubt each of the following
21 elements: First, that the defendant trans-
22 ported, or aided, abetted or caused the
23 transportation of Mary Shepherdson across
24 state lines. Now, there is no requirement
25 that the defendant knew or must be shown to

1 have known that he was transporting the
2 victim of a kidnapping across state lines.
3 It is sufficient that the government proves
4 beyond a reasonable doubt that the victim
5 was, in fact, carried across state lines.

6 The second element is that the
7 defendant knowingly or wilfully seized, or
8 confined, or inveigled, or decoyed, or
9 kidnapped, or abducted or transported or
10 carried away and holds Mary Shepherdson
11 against her will.

12 In other words, that the person
13 or victim was seized, transported or other-
14 wise deprived of her liberty, without her
15 consent.

16 Now, here, to kidnap, means
17 forcibly and intentionally to abduct, or
18 steal, or carry away a person and detain or
19 keep or confine the person against his or her
20 will.

21 Voluntariness or coercion in
22 connection with the victim's seizure and
23 detention is the essence of the crime. This
24 coercion must be done with a wilful intent
25 to confine the victim, and it may be achieved

1 by mental, or by instilling fear as well as
2 by physical means.

3 Now, the act of holding and
4 kidnapping a person for any purpose means
5 the known and intentional, physical or mental
6 restraint or seizure, transportation, for any
7 appreciable period of time, against the person's
8 will. Trickery, by deceit to get the person to
9 accompany the defendants would be sufficient.
10 It means the knowing and wilful imposition by
11 the defendant of the physical or mental
12 restraint upon the movements of the victim.
13 She must knowingly be deprived of her liberty,
14 compelled to remain where she does not wish
15 to remain, or compelled to go where she does
16 not wish to go.

17 You cannot find that she was un-
18 lawfully restrained if the evidence shows that
19 she was perfectly free not to accompany these
20 defendants on this ride, or if she was per-
21 fectly free to leave them at any time that
22 she desired.

23 Seizure, transportation and
24 compulsory detention against the will of the
25 victim are the very essentials of the crime

1 of kidnapping. Therefore, if you find that
2 the victim voluntarily consented to be taken
3 for a ride, or if the ride was prearranged
4 by her, or by any other person without the
5 knowledge or complicity of either of these
6 defendants, then you must find that the de-
7 fendants are not guilty of the charge made
8 here.

9 Now, in that connection, the
10 victim's consent may be either expressed or
11 implied, and in determining whether she
12 consented you, of course, consider her own
13 testimony. But you are not bound by that.
14 It is not conclusive. You should also con-
15 sider all of the surrounding circumstances
16 shown in the evidence.

17 However, if after considering all
18 of the evidence you find that the victim voiced
19 or expressed a consent, if she went along with
20 the defendants' request and cooperated with
21 them in leaving Debbie's apartment, or in
22 accompanying them on this ride, you still must
23 decide whether her expressions of consent,
24 whether her cooperation were given of her own
25 free will or whether she was induced by

1 physical or mental restraint, forced, or the
2 threat of it, or the compulsion on the part
3 of the defendants in any way. In other words,
4 was she acting of her own free will? Was she
5 deprived or restrained of her liberty in any
6 way against her will under force, or the threat
7 of force?

8 The third element that the govern-
9 ment must prove beyond a reasonable doubt is
10 that the person kidnapped was held for reward
11 or ransom, or otherwise. To satisfy this
12 element the government does not need to show
13 that there was a kidnapping for monetary gain.
14 It is sufficient if it shows that it was for
15 any reason. The government may not prove
16 that the defendants ultimate purpose was il-
17 legal. It is enough that if it proves an
18 intent to seize and hold the victim for the
19 purpose of obtaining information about a
20 drug rip-off, and in this connection, the
21 question here is not whether Mary Shepherdson
22 was a loving mother or a nice woman, or
23 whether she was involved in drug deals, or
24 convicted of dealing in drug deals, or knew
25 about a drug rip-off, or even if any of those

1 facts were true, they do not give anyone a
2 license to kidnap her. Nor would they, in
3 any way, justify or excuse or constitute an
4 offense to the wilful deprivation of her
5 liberty by the defendants.

6 The fourth element is that the
7 defendant, whom you are considering, com-
8 mitted the acts charged in the indictment
9 knowingly or wilfully. Now, you will note that
10 in discussing the crimes charged here I have
11 said that the defendant must have acted
12 knowingly, wilfully and unlawfully. This
13 does not mean that the defendant must know
14 that he is violating the federal kidnapping
15 law. This means only that the defendant
16 must know what he is doing. Here it means
17 that he must consciously seize, transport or
18 hold Mary Shepherdson against her will, and
19 that he did so intentionally.

20 Unlawful means of the act must
21 be something prohibited by law, which any
22 such act is. In essence, then, the phrase
23 "knowingly, wilfully and unlawfully," mean
24 a voluntary and deliberate prohibitive pact.

25 In determining whether the

1 defendant acted knowingly and wilfully, you
2 should consider all of the circumstances and
3 such evidence as you recall and believe as to
4 whether the defendant used force, fear, de-
5 ception, trickery to seize, to transport or
6 confine Mary Shepherdson against her own wishes
7 and will.

8 In this connection, if you find
9 that the defendant threatened Mrs. Shepherdson
10 with a pistol, you may, if you wish, infer
11 that it was loaded with bullets, capable of
12 causing bodily harm.

13 You should consider any other
14 circumstances shown in the evidence which lead
15 you to the conclusion of whether or not the
16 defendant acted with a conscience, and guilty
17 knowledge that he was depriving Mary Shepherdson
18 of her liberty without her consent. In this
19 connection, actions speak louder than words,
20 and we are trying to look at what was going
21 on in the defendant's mind.

22 Now, in this connection, you will
23 recall the testimony of Mr. Sampson to the
24 effect that he was shot by the defendant Brown.
25 You may not consider that evidence, evidence of

1 a subsequent similar act to be one charged
2 here on the question of whether the defendant
3 kidnapped Mary Shepherdson. But you may
4 consider it on the question of whether the
5 defendant acted intentionally, whether he had
6 a guilty consciousness. You may also consider
7 that evidence on the question of whether the
8 defendant had a common plan or design and
9 also on the question of the identity of the
10 defendant Brown.

11 Also, in this connection, the
12 Court admitted one of the exhibits taken
13 from the files of the Welfare office. Now,
14 that exhibit was admitted as a record kept in
15 the regular course of business, and counsel
16 were allowed to use it for the purpose of
17 challenging the credibility of Mary Shepherdson
18 when she denied that she had been involved here
19 in drug deals, or in the rip-off. But bear in
20 mind that a person who is the source of this
21 document, Peggy Russell, was not here, she
22 was not testifying under oath, she was not
23 subject to cross-examination, so you should
24 consider that while this document is ad-
25 missible for the purposes for which I have

1 told you, you should consider what weight to
2 give it.

3 Simply, it goes to the weight
4 of it, and not to its admissibility. It is
5 admitted it is a record kept in the regular
6 course of business, and it is for you to give
7 it such weight as you think it deserves.

8 In that connection, as I have
9 told you before, we are not concerned with
10 the character of Mary Shepherdson as it may
11 bear on her credibility as a witness.

12 Now, this indictment also
13 charges the defendants with aiding and
14 abetting in the kidnapping. It is not
15 necessary for the government to show that
16 the defendant, whom you are considering,
17 actually committed the crime of kidnapping.
18 The law provides that a person who aids and
19 abets another to commit a crime is just as
20 guilty of that crime as if he committed it
21 personally. Accordingly, you may find a
22 defendant, whom you are considering, guilty
23 of the crime charged in the indictment if you
24 find, beyond a reasonable doubt, that the
25 defendant aided or abetted some other person

1 in the commission of the crime. Here the
2 government contends that each of the defendants
3 now on trial aided and abetted the other in
4 the commission of the crime.

5 Before you can convict the
6 defendant for aiding and abetting, however,
7 you must find that the crime was committed by
8 someone and that the defendant whom you are
9 considering consciously associated himself with
10 the criminal venture, with the intent that
11 his conduct would help it succeed. You must
12 be convinced beyond a reasonable doubt that the
13 defendant was doing something to aid the
14 crime, or to forward the crime of the other
15 person, that he was a conscious, knowing
16 participant in the crime, with a stake in
17 its success, rather than a mere witness,
18 spectator, or bystander on the scene of the
19 crime committed by another.

20 You should consider each defendant
21 separately. If you find that the government
22 has failed to prove to your satisfaction, to
23 your satisfaction beyond a reasonable doubt,
24 each of the elements of the crime as I have
25 defined them, or that the government has

1 failed to prove that the defendant whom you
2 are considering knowingly aided and abetted
3 another in the commission of the crime charged
4 in the indictment, you should return a verdict
5 of not guilty as to that defendant.

6 On the other hand, if you find
7 that the government has proved to your satis-
8 faction, beyond a reasonable doubt, all of the
9 elements of the crime, as I have given them
10 to you, and/or as proved that the defendant
11 whom you are considering knowingly aided and
12 abetted another in the commission of the crime
13 charged in the indictment, you should return
14 a verdict of guilty as to that defendant.

15 Now, the question of possible
16 punishment in the event of a conviction is no
17 concern of yours, and it should not enter
18 into or influence your deliberations. The
19 duty of imposing sentence, in the event of a
20 conviction, rests exclusively upon the Court.

21 The function of the jury is to
22 weigh the evidence in the case, and determine
23 the guilt or innocence of the defendant,
24 solely upon the basis of such evidence.

25 When you retire to the jury room,

1 treat one another with consideration and
2 respect, as I know you will. If differences
3 of opinion arise, your discussions should be
4 dignified, calm and intelligent. Your verdict
5 must be based on the evidence, and the law.
6 The evidence which was presented in this case
7 as you remember it, and the law as I have
8 given it to you in this charge. You are each
9 entitled to your own opinion. No juror should
10 acquiesce a verdict against his own conscious
11 judgment. Nevertheless, no juror should enter
12 a jury room with such pride of opinion that
13 he would refuse to change his mind no matter
14 how convincing or intelligent the arguments
15 of a fellow juror. Talk out your differences.
16 Jury discussion is the very heart of our
17 democratic jury system. Each of you should,
18 in effect, decide the case for himself or
19 herself after thoroughly reviewing the
20 evidence and frankly discussing it with your
21 fellow jurors, with an open mind, and with a
22 desire to reach a verdict. If you do that,
23 you will be acting in the true democratic
24 process of the American jury system.

25 There are 12 of you on this jury.

1 The alternates will be excused before you re-
2 tire to your deliberations. Any verdict must
3 be the unanimous verdict of all of you, and it
4 must represent the conscience and honesty of
5 each of you. When you retire to the jury room
6 you will elect one of your number to act as
7 your foreman or forelady, and to report your
8 verdict to the Court.

9 I submit the case to you with
10 every confidence that you will fully measure
11 up to the oath which you took as members of
12 the jury, to decide the issues submitted to
13 you fairly, and impartially, and without
14 favor.

15 Now, members of the jury, if you
16 find that the government has failed to establish
17 the guilt of the defendant, whom you are con-
18 sidering, beyond a reasonable doubt, that
19 defendant should be acquitted. If you find
20 that a defendant has not violated the law,
21 you should not hesitate to render a verdict
22 of not guilty.

23 But on the other hand, if you
24 find that the government has established the
25 guilt of the defendant beyond a reasonable

1 doubt, you should not hesitate, because of
2 sympathy or any other reason, to render a
3 verdict of guilty.

4 Your foreman or forelady, there-
5 fore, will return an oral verdict in open
6 court, as to each defendant.

7 Are there any exceptions, gentle-
8 men? If so, I will hear you up here.

9 MR. SCELSI: May I reserve my
10 right to make exceptions?

11 THE COURT: No, I cannot reserve
12 them. If I have made an error, I have to
13 correct it while the jury is in the box.

14 MR. SCELSI: I would like to
15 take exception to the --

16 THE COURT: Come up to the bench.
17 (Whereupon the following took
18 place at the bench, out of the hearing of the
19 jury.)

20 MR. SCELSI: Your Honor, I would
21 like to take an exception to the charge as to
22 kidnapping, that it must find them guilty,
23 each defendant, knowingly or wilfully seized
24 or confined --

25 THE COURT: (Interrupting) I

1 recess, awaiting the jury verdict.

2 (Whereupon, at 2:55 p.m. the
3 following occurred.)

4 THE COURT: The jury has sent
5 out a note asking for all of the exhibits,
6 and we will send them in for both counsel
7 and for the government and the counsel for
8 the defendants agree that the only exhibit
9 in evidence for the government is Exhibit 1,
10 and Defendant's Exhibit A?

11 MR. PAVONE: Agreed.

12 MR. SCELSI: Yes.

13 MR. FINER: Yes.

14 THE COURT: That is all.

15 (Whereupon, at 3:45 p.m. the
16 jury brought in the verdict.)

17 THE COURT: Please be seated.

18 THE CLERK: Ladies and gentlemen
19 of the jury, have you agreed upon a verdict,
20 and if so, how do you find, and who shall say
21 for you?

22 THE FOREMAN: We have found the
23 defendant Mr. Cavallaro guilty, and we have
24 found Mr. Brown guilty.

25 THE CLERK: Harken to your verdict.

SCELSI

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 31 day of Jan. 1977 deponent served the within *Appendix* upon

U.S. Atty., Northern Dist. of NY

attorney(s) for
Appellee

in this action, at
Federal Post Office Building,
Utica, N.Y. 13503

the address(es) designated by said attorney(s) for that purpose by depositing
_____ copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

[Signature]
ROBERT BAILEY

Sworn to before me, this 31 day
of Jan. , 1977

[Signature]
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978